Calendar No. 1042

100TH CONGRESS
2d Session

SENATE

REPORT
100-577

AN ACT TO ESTABLISH PROCEDURES FOR REVIEW OF TRIBAL CONSTITUTIONS AND BYLAWS OR AMENDMENTS THERETO PURSUANT TO THE ACT OF JUNE 18, 1934 (48 STAT. 987)

SEPTEMBER 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 2677]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 2677) to amend an Act to establish procedures for review of Tribal constitutions and bylaws or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987), having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE

Title I of H.R. 2677 amends the Indian Reorganization Act of June 18, 1934 to provide guidelines for the Secretarial approval of tribal constitutions submitted under Section 16 of the Act. Title II of the Committee's substitute bill includes a number of amendments to other existing laws affecting Indians. Title III will remedy an error made by the U.S. Department of the Interior in 1946, which resulted in 560 acres of trust land being alienated from an enrolled member of the Blackfeet Tribe of Montana, without his knowledge or consent; and Title IV provides for increased access to usual and accustomed fishing sites for Columbia River treaty fishing tribes.

BACKGROUND

Title I of the bill amends Section 16 of the Indian Reorganization Act of 1934. Section 16 gives tribes the option to reorganize their tribal governments by adopting new tribal constitutions. Under the Act, such constitutions—

S413-24

> Shall become valid when ratified by a majority vote of the adult member * * * at a special election authorized and called by the Secretary of the Interior * * * Such Constitution when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election * * * conducted in the same manner as hereinabove provided.

In *Coyote Valley Band of Pomo Indians* v. *United States,* 13 ILR 3071 (E.D.Cal. 1986), a California Federal district court held that under the 1934 Act, the Secretary of the Interior has a mandatory, non-discretionary duty to call elections to ratify IRA documents within a reasonable time after a request from an eligible tribe. Under the ruling, the Secretary has to call the election even if he intends to disapprove the document following ratification by the tribal electorate.

In the *Coyote* case, the tribes alleged that the Secretary improperly withheld authorization of the tribal election until the tribe's draft constitution had been reviewed, modified as suggested by the BIA, and approved. The election was delayed for four years and the modifications sought by the BIA were not related to the validity of the draft constitution under federal law. The court held that the Secretary had the discretion to approve the draft constitution only after he had conducted the election for ratification of such constitution.

Title I of H.R. 2677 authorizes the Secretary to review the draft tribal document before the election is called. However, the Secretary is required to call a tribally requested election within a time certain after receipt of a tribal request and can only refuse to approve the document if he finds that the draft document is in violation of applicable law. The tribe also has the right to challenge any finding made by the Secretary as to the legality of a proposed tribal document in the appropriate Federal court. The amendment deletes reference to residence on a reservation and eliminates reservation status or ownership of a tribal land base as a condition precedent to organization under this Act.

The Committee's deletion of references to the rights of Indians residing on the same reservation to organize under the 1934 Act does not alter the authorities with respect to the organization of such Indians because of the definition of "tribe" in section 19 of the 1934 Act (25 U.S.C. 479) which includes "the Indians residing on one reservation." In the case of such a "tribe" the members of the tribe are the residents of the reservation.

Title II of H.R. 2677, as ordered reported, includes a number of technical and clarifying amendments to various statutes, including the recently passed amendments to the Indian Self-Determination and Education Assistance Act. In addition, Title II includes: an amendment to the Old Age Assistance Claims Settlement Act to eliminate the need to pay heirs amounts as small as 2 cents; a correction in a land description in the Grand Ronde Reservation Act; a provision to implement a judgment distribution plan for the Choctaw and Chickasaw tribes; a provision to correctly distribute funds from the Chilocco Indian School property; a provision to conform two different preference statutes for Indian educators; an amendment to the Buy Indian Act to include printing as well as printing products; an amendment to make waste water treatment

funds available to Indian lands in Oklahoma and Alaska; a removal of the restriction on taking certain lands into trust for the Yakima Indian Nation; a correction to the Native American Programs Act; an amendment to a 1957 law concerning taxation of certain Agua Caliente allotted lands condemned for public purposes; and an authorization to use fiscal year 1987 funds for start-up costs for Tiospa Zina Tribal School in South Dakota.

Title III of the bill incorporates the provisions of S. 802, a bill sponsored by Senator John Melcher to provide a remedy for the error made by the U.S. Department of the Interior in 1946, with respect to 560 acres of trust land which were alienated from Mr. John Benedict Renville, an enrolled member of the Blackfeet Tribe, without his knowledge or consent. The Bureau of Indian Affairs approved the sale of lands which had been devised to Mr. Renville by his grandfather, subject to a life estate in his mother, pursuant to a will which had been approved by the Bureau of Indian Affairs. Mr. Renville was not notified of this transaction nor was his consent obtained. Mr. Renville has been unsuccessfully seeking administrative and court remedies since 1957, when he first learned of the alienation of his land and loss of his inheritance.

The bill provides a legislative solution which will enable the land to be returned to Mr. Renville and be held in trust by the United States for his benefit; it will compensate the parties who have purchased the land in good faith; compensate Mr. Renville for rentals and income he lost during the period the land was alienated; and require that all law suits, including any counterclaims or cross-claims, be dismissed with prejudice. Compensation to be paid to the parties shall not exceed the following sums: To John Benedict Renville, the sum of $215,535.00, the sum of $50,000.00 to be paid to Mr. Renville without limitation, and the remainder of $165,535.00, less attorney fees, to be held in trust by the Secretary of the Interior for his benefit; $58,500.00 to be held in trust by the Secretary of the Interior for the Blackfeet Tribe of Montana; and $127,000.00 to be paid to Mary Lois Peterson Munoz, a non-Indian purchaser in good faith.

Total monetary compensation to be paid to the three parties thus shall not exceed $401,045.00. The funds for the compensation shall be drawn from funds available in the United States Treasury available for payment of judgments against the United States. Attorney fees to be paid the attorney for John Benedict Renville shall not exceed ten percent of the value of the compensation provided Mr. Renville under this Act, including the value of the land restored to Mr. Renville. Such compensation shall be paid from the funds otherwise directed to be paid to the Secretary of the Interior for the benefit of Mr. Renville.

John Benedict Renville, through his counsel, has agreed to the settlement proposed in this legislation. The Blackfeet Tribe has agreed, by Tribal Resolution No. 250–87 passed on April 2, 1987, to return the lands remaining in their possession to Mr. Renville, provided they be reimbursed for those lands. Mary Lois Peterson Munoz, by letter dated March 14, 1988, has agreed to accept the sum of $127,000 in full satisfaction of the claims and for the transfer or her interest in the above lands. The John Hancock Mutual Life Insurance Company, by letter from its counsel dated March 25,

1988, has committed to sell the 280 acres in question to Mrs. Munoz for the sum of $79,475.38, plus accrued interest at 10 percent per annum from July 8, 1987, assuming there is no redemption by third parties whereby Hancock does not acquire title to the premises. This sale would carry no title insurance with it and would be subject to the 1987 and 1988 taxes, if any.

Communications received by this Committee from the Department of the Interior and the Department of Justice expressing the views of the Administration are set forth in the section of this report reserved for Executive Communications. Other important communications or documents are set forth below.

Consolidated agreed facts.—On August 21, 1986, the following statement of "Consolidated Agreed Facts" was filed with the United States District Court for the District of Montana in the case of *Renville* v. *The Blackfeet Tribe, et al.*, No. CV-84-041-GF.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, GREAT FALLS DIVISION

[No. CV-84-041-GF]

JOHN BENEDICT RENVILLE, PLAINTIFF

v.

THE BLACKFEET TRIBE OF INDIANS; THE UNITED STATES DEPARTMENT OF THE INTERIOR; BUREAU OF INDIAN AFFAIRS; AND LOIS PETERSON MUNOZ; AND FRANK AND DOROTHY HENDERSON, DEFENDANTS

CONSOLIDATED AGREED FACTS

A. Undisputed facts

1. Garrett White, Blackfeet Allottee No. 1134, died testate on February 8, 1932. He was survived by a daughter, Genevieve White Renville Reevis (hereinafter referred to as "Genevieve"), Blackfeet Allottee No. 1135, and Genevieve's then minor child, John Benedict Renville, Plaintiff herein. Garrett White's Last Will and Testament reads in dispositive part:

> Second: I give, devise and bequeath to Genevieve White, Allottee #1135, my homestead allotment described as W½W½SW¼, Sec. 13, T. 32 N., R. 13 W., NE¼NW¼, Sec. 2, T. 31 N., R. 13 W., containing 80 acres; to her I devise my inherited interest in the estate of Mary Rose White, Allottee #2649, described as SE¼SW¼, N½SE¼, SE¼SE¼, Sec. 21, SW¼, Sec. 22, T. 33 N., R. 7 W., containing 320 acres, and the NE¼SW¼, Sec. 2, T. 31 N., NE¼SE¼, Sec. 14, T. 32 N., R. 13 W., containing 80 acres; to her I devise my inherited interest in the estate of Eli White, Allottee #1136, described as NE¼SW¼, Sec. 21, T. 33 N., R. 7 W; SW¼SE¼, Sec. 14, T. 32 N., R. 13 W., containing 80 acres, being the homestead allotment of Eli White; and to her I devise my ½ inherited interest in the homestead allotment of Manywhitehorses Longtimegoodsuccess, Allottee #1175, described as N½SE¼, Sec. 12, T. 36 N., R. 7 W., containing 80 acres; I have an inherited in-

> terest in the estate of Nancy Greely White, a Sisseton, South Dakota, Allottee #603, and I hereby devise my 3/8 interest to said Genevieve White.
>
> I wish my daughter, said Genevieve White, to hold the above described land in trust during her lifetime for the benefit of my grandson, John Renville, but she to have the use of the same during her lifetime. If it be considered advisable when my grandson reaches the age of say 14 or 15 years to sell some of the smaller pieces of land, my daughter, Genevieve White, may do so, with the advise and consent of the Superintendent of Blackfeet Agency. The money secured in this way to be used for the education of my grandson and to improve or stock the remaining property.

(Will of Garrett White, Paragraph Second, dated May 27, 1929 (Exhibit "A", Attached).

2. A probate hearing on the Will of Garrett White was held on June 21, 1932. At that hearing Genevieve recognized that she had inherited only a life-estate by the Will and that her son, John Benedict, had inherited the remainder interest. Realizing she could not sell the land as her own because she owned only the life estate, Genevieve asked that the Will not be approved, requesting instead that it be "broken." (Letter of July 31, 1957; from the Field Solicitor to the Area Director, Billings Area Office; Re: Title to Land conveyed to Genevieve to the Blackfeet Tribe; pg. 2) (Exhibit "B" Attached).

3. The Will was not broken as requested by Genevieve. Instead, it was approved on January 14, 1933, by Interior Department officials. The Order Approving Will and Determining Heirs dated January 14, 1933, reads in pertinent part:

> Now, therefore, by virtue of the power and authority vested in the Secretarty of the Interior by the Act of February 14, 1913 (37 Stat. 878), the above mentioned written instrument, dated May 27, 1929, is hereby approved as the Last Will and Testament of the decedent above named, and I hereby find and adjudge and declare that at the date of the above mentioned hearing the heir of said decedent determined in accordance with the laws of the State of Montana and South Dakota, and her share in that part of his estate not disposed of by said Last Will and Testament, was:

Genevieve White, or Manywhitehorses, Entire estate. (Order Approving Will and Determining Heirs, Garrett White, Probate N. 56620–1932, dated 1/14/33.) (Exhibit "C", attached).

4. Without regard for the limited estate devised to her by the Garrett White Will, Genevieve purported to convey the following interests in the Garrett White estate to the Blackfeet Tribe:

> 1. That portion of the Garrett White homestead Allotment 1134 described as: W½W½SE¼, Section 13, T. 32 N., R. 13 W., containing 40 acres, SE¼SE¼ of Section 21, Township 33 North, Range 7 West.

2. The Eli White homestead Allotment 1136, described as: NE¼SW¼, Sec. 21, T. 33 N., R. 7 W., SW¼SE¼, Sec. 14, T. 32 N., R. 13 W., containing 80 acres.

3. The Mary Rose White Allotment 2649, described as: SE¼SW¼, N½SE¼, Sec. 21, SW¼ Sec. 22, T. 33 N., R. 7 W., NE¼SW¼, Sec. 2, T. 31 N., R. 13 W., NE¼SE¼, Sec. 14, T. 32 N., R. 13 W., containing 400 acres.

These lands were purportedly conveyed by Genevieve, as the sole grantor, to the Blackfeet Tribe by Warranty Deeds dated October 14, 1946. Said deeds were approved by the Billings District Director, Office of Indian Affairs on October 26, 1946. Nothing in the record indicates whether John Benedict Renville's interest as remainderman was considered when the sale were approved. (Letter from Superintendent, Blackfeet Agency to Area Director, Billings Area, undated; RE: Title to deeds executed by Genevieve and approved by Billings Area Office, pgs. 2–3). (Exhibit "D," attached hereto).

5. At the time of the sale of the lands, John Renville was 22 years of age, and was in Europe in Military Service. (Transcript of proceedings dated August 23–24, 1960, in the Estate of Garrett White, Probate 56620–32.) (Exhibit "E", attached hereto). John Renville never condoned, ratified or adopted any of the sales in question; nor was he ever consulted about the sales (*Id.*) (Record as here presented.)

6. On December 3, 1953, the Blackfeet Tribe exchanged 280 acres of the lands at issue herein, described as the N½SE¼, SE¼SE¼, Sec. 21, SW¼, Sec. 22, T. 33 N., R. 7 W., for 280 acres of fee patented land owned by Frank and Dorothy Henderson. The Henderson land was located in original Blackfeet Allotment 5049, and described as SW¼SW¼, E½SW¼, SE¼, Sec. 16, T. 33 N., R. 7 W. On August 13, 1954, a fee patent was issued to Frank and Dorothy Henderson. (*See* record on file herein.)

7. Questions about the validity of the transfers from Genevieve to the Blackfeet Tribe arose in early 1957. In July of 1957, the Superintendent of the Blackfeet Agency requested an opinion of the Billings Area Director "as to what title was conveyed to the Blackfeet Tribe by the three deeds in question." (*See* Exhibit "D", pg. 2, attached). The Agency Superintendent expressed his belief that Genevieve "owned only a life estate in the lands," and that the "remainder would pass on her death to John Renville. . ." (*Id.*, pg. 1).

8. On July 17, 1957, the Billings Area Director, Bureau of Indian Affairs requested an opinion from the Field Solicitor of the same office, "as to what title was conveyed to the Blackfeet Tribe by these deeds and what action necessary to validate title of any interest owned by John Benedict Renville in this estate." (Memorandum from the office of the Billings Area Director to the Field Solicitor, Billings, Area, dated July 17, 1957.) (Exhibit "F", attached hereto).

9. On July 31, 1957, the Billings Area Field Solicitor responded to the request for opinion of the Area Director. In his analysis, the Field Solicitor determined that the Garrett White Will was actually a testamentary trust within a trust with Genevieve as the trustee of the beneficial use of the land and the United States as the trustee and legal title holder of the land. 1 In both instances the

beneficiary was John Benedict Renville. (*Exhibit B*, at 3). The Field Solicitor ultimately concluded, among other things, that deeds in question "should doubtless be cancelled." (*Id.* at 7.) This conclusion was based upon the Field Solicitor's determination that the deeds were invalid because Genevieve did not have the authority to convey the lands to the Tribe. (*Id.* at 3.)

10. On September 10, 1957, the Area Director, Billings Area office wrote to the Commissioner, Bureau of Indian Affairs requesting a review of the case and advice of the Commissioner as to the validity of the deeds and action required to correct ownership in the event the deeds were invalid. The Billings Area Director intimated a "possibility in accordance with the terms of the will that the deeds which were approved are valid." (Letter from the Billings Area Director to the Commissioner, Bureau of Indian Affairs, dated September 10, 1957.) (Exhibit "G", attached hereto.)

11. By Memorandum dated October 2, 1957, the Commissioner, Bureau of Indian Affairs requested an opinion of the Associate Solicitor as to the interpretation of the Will of Garrett White. (Memorandum from Commissioner, Bureau of Indian Affairs to Associate Solicitor, dated October 2, 1957.) (Exhibit "H," attached hereto).

12. Before the Associate Solictor could issue an opinion, Genevieve died intestate; her death occurred on December 4, 1957. At this point the matter was transferred to the Examiner of Inheritance, Billings Area. Directions were given to the Examiner of Inheritance that it would be necessary to interpret the Will of Garrett White before determinations could be made in the estate of Genevieve. (Letter from the Deputy Solicitor to Examiner of Inheritance, Billings Area, dated May 14, 1958.) Exhibit "I", attached hereto.)

13. At the time of the transfer of the matter from the Solicitor to the Examiner of Inheritance Indian probate authority resided in the Solicitor. Pursuant to his directive, the Examiner of Inheritance held hearings into the matter on July 23, 1959 (See Notice of Hearing to Interpret Will, dated June 12, 1959) (Exhibit "J", attached) and on August 23 and 24, 1960 (See Notice of Hearing to Interpret Will, Exhibit "J" attached). The question presented at the hearing involved the interpretation of the Garrett White Will, and the procedure to be followed on probating the estate of Genevieve White Renville Reevis.

14. After the August, 1960 hearings, the matter remained unresolved and under negotiation. On December 8, 1969, attorneys representing John Renville wrote a demand letter to the Blackfeet Agency Superintendent. The matter was again returned to the Examiner of Inheritance (the Examiner in this case was Examiner McKee). On August 30, 1970, Examiner McKee became Chairman of the Board of Indian Appeals in the newly created Office of Hearings and Appeals. The matter was then referred to Administrative Law Judge Eldge for completion and recommendation.

15. The original directive under which the July, 1959 and August 1960 hearings were held provided that the Examiner's recommendations would be submitted to the Solicitor for approval before a final order would issue. (See Exhibit "I.) Before this process could be completed, the Secretary of the Interior delegated his authority over Indian probate matters to the Director and Boards of the

newly formed Office of Hearings and Appeals. 38 Fed. Reg. 12081 (effective July 1, 1970). Pursuant to this delegation, the Director of the Office of Hearings and Appeals had authority to decide all issues presented by the Garrett White Will and the Estate of Genevieve White Renville Reevis.

16. On December 22, 1972, the Administrative Law Judge issued Findings and Recommendations with regard to the Will of Garrett White and the effect thereof on the estate of Genevieve White Renville Reevis. Rejecting an Interior Department argument that responsibility for the invalid transactions be shifted from the Bureau of Indian Affairs to the Blackfeet Tribe or Genevieve, the Judge found that Genevieve had only a life estate in the land conveyed by Paragraph SECOND of the Garrett White Will. Further the Judge found that due to the limited estate of Genevieve, her purported sales to the Blackfeet Tribe were void. Thus the Judge recommended that action be taken to resolve title to the lands in the United States in trust for John Benedict Renville. (In the Matter of: (1) The Last Will and Testment of Garrett White, deceased, allottee 1134, (Estate of Genevieve White Reevis, Blackfeet allottee 1135, dated December 22, 1972), (Exhibit "K", attached hereto).

17. The matter was then transferred to the Interior Board of Indian Appeals, Office of Hearings and Appeals, the United States Department of the Interior. However, in the time before I.B.I.A., could issue its decision, the land held by the Hendersons was sold several times. On July 1, 1955, for good and valuable consideration, the Hendersons sold said lands to William Judisch and Joey M. Judisch—predecessors in interest to Defendant Munoz. At the time of the purchase by the Judischs, they had not actual notice of any potential cloud on the title. On December 2, 1965, by transfer from the Judischs, Donald J. Peterson and Mary Lois Peterson (Munoz) became the owners of the property. Mary Lois Munoz has been the sole owner of the property following a divorce between her and Donald Peterson. Since July 1, 1955 Defendant Munoz and her predecessors in interest have been in uninterrupted possession of the property, improved and enclosed the same, and paid taxes thereon.

18. On February 19, 1975, the Interior Board of Indian Appeals issued its "Decision Interpreting Will, Estate of Garrett White, deceased Blackfeet allottee No. 1134, Probate Nos. 56620-32, IP BI 003A 71, and IP BI 004A 71, IBIA 75-48 (Decided February 19, 1975) (Exhibit "L", attached hereto). The Board assumed jurisdiction to decide all the issues presented by the case, including determining the validity of the 1946 transfers of land by Genevieve to the Blackfeet Tribe. (Exhibit "L" at pg. 10.) Thus the Board proceeded to address, (1) the interpretation of the Will of Garrett White, and (2) the validity of the transfers of land by the Tribe and Genevieve. (Exhibit "L".)

19. Agreeing with findings of the Administrative Law Judge the I.B.I.A. found "that the estate created by the devise to Genevieve White was limited to a life estate with remainder over to the grandson of Garrett White, John Renville." (Exhibit "L" at p. 8). As to the validity of the various transfers, the Board found that Genevieve was without power to convey more than a life estate. (*Id.*) Thus the Board concluded that "the Blackfeet Tribe never re-

ceived fee title, but only a life estate during the life of Genevieve, and a color of equitable title." (Id.) The Board further determined that the Hendersons and all subsequent purchasers held the land in constructive trust as trustees for John Renville. (*Id.*)

20. The Board further determined that the patent issued to the Hendersons was "invalid." (Exhibit "L" at p. 11). In reaching this determination the Board reasoned that John Renville was the owner of the remainder interest, that as such his consent to the issuance of a fee patent was required, and that John Renville had not consented. Thus the Board concluded that "[i]n each case the transactions were void and the fee patent is subject to recession." (Exhibit "L" at p. 11, footnote omitted.)

21. Ultimately the Board concurred in the A.L.J. "recommendation for restoration of the loss which John Renville suffered. . ." (*Id.* at p. 11). But due to the apparent uncertainty of how to resolve the matter, the I.B.I.A. refrained from issuing a specific order. (*Id.*) The Board directed that the Bureau of Indian Affairs and the Solicitor should confer with John Renville to ascertain precisely his demands, and that, thereafter, the necessary legal steps could "be initiated to *restore title to the rightful owner*, consistent with [the Board's] decision." (*Id.*) (Emphasis added).

22. On August 24, 1977, John Renville wrote to the Superintendent of the Blackfeet Agency requesting that he be given his land back, with the income and interest thereon at the legal rate. (Exhibit "M" attached hereto.) No claim was made by the Plaintiff against Munoz until the Complaint in this action was filed on February 10, 1984.

23. Nothing further occurred until August 20, 1979, when the Interior Department Solicitor, Leo M. Krulitz, directed by memorandum that no litigation be brought for the return of Indian allotted lands that had been conveyed in violation of the restrictions against alienation. (Exhibit "N" attached hereto). However, the Interior Department failed to notify John Renville of this decision.

24. In 1980, the Billings Area Office of the Bureau of Indian Affairs presented a legislative settlement to its Central Office in Washington, D.C.; as of March 16, 1984, the Bureau of Indian Affairs had yet to find a congressional sponsor. (Exhibit "O" attached).

25. Some time in 1982, as a result of the efforts of private citizens, Senator Melcher of Montana, started working on legislation to solve this dispute. The proposed legislation would have given John Renville only monetary compensation for the loss of his land. Said legislation was refused by John Renville on the basis that he wanted the return of his land in addition to lost rents and profits, plus interest thereon, rather than just monetary reimbursement.

26. On November 12, 1981, the Blackfeet Tribal Business Council passed Tribal Resolution Number 33-82, wherein said Tribe recognized the invalidity of the sales by Genevieve to the Tribe, and said Tribe further agreed to return title to all land in its possession which rightfully belonged to John Renville. (Exhibit "P" attached.)

27. Neither the Blackfeet Tribe nor the United States government has taken any legal action to quiet title to the lands in question herein. Neither the Blackfeet Tribe nor the United States government made any valid tender of funds to Plaintiff John Renville

or to Defendant Munoz for the loss of the land involved and the profits to flow therefrom.

28. John Renville was born on June 26, 1924, and except for the period of time served in the Armed Forces (3 years), he has been under no disability since attaining majority.

29. That in those instances where notice was given to Defendant Munoz, she has reacted reasonably and promptly in any and all proceedings initiated or undertaken by the government and the Plaintiff which, in any way could adversely affect her title to the land here involved.

30. Promptly within the time allowed by law, Defendant Munoz filed her exceptions to the findings of the Indian Board of Appeals. In response, she was notified by the office of Hearings and Appeals, Interior Board of Indian Appeals, that the Order of February 19, 1975, in no way prejudiced her rights, which remained intact. Defendant Munoz was further advised that ample opportunity would be afforded her to protect her rights in any future action contemplated by the Bureau of Indian Affairs to effect a transfer of title.

31. In June or July of 1977, a representative of the Bureau of Indian Affairs, Billings, Montana, notified Defendant Munoz that the government decided to dispose of the controversy on a direct basis with John Renville. As a result of this contact Defendant Munoz made inquiry of the Bureau of Indian Affairs office of Billings, Montana, to discover what she should do to file a claim or otherwise protect her interest.

32. Pursuant to this inquiry, the Bureau of Indian Affairs assured Defendant Munoz that she would be informed by the Bureau when a course of action had been determined. (See copy of July 14, 1977, letter from the B.I.A. to Defendant Munoz's Counsel) (Attached as Defendant Munoz's Exhibit "B".)

33. No delays can be reasonably attributed to Defendant Munoz.

34. From when the land was purchased by Judisch until the hearing, neither Munoz nor her predecessors in interest were given any notice by the U.S. Government, by the Blackfeet Tribe of Indians or the Plaintiff or his predecessors in interest as to the controversy affecting the title to the land in question.

35. Munoz has paid the taxes assessed on the lands since she acquired the land.

36. The land involved in this controversy between Renville and Munoz is described as E½SE¼ and the NW¼SE¼ of Section 21, and the SW¼ of Section 22, all in Township 33 North, Range 7 West.

37. The following is a synopsis of events affecting the transfer of title:

1. Garrett White died 2-8-1932.

2. Order Approving Will and Determining Heirs of Garrett White 1-14-1933.

3. Sale by Genevieve White to the Blackfeet Tribe 10-26-1946.

4. Land exchanged by the Blackfeet Tribe of the land to Henderson 12-3-1953.

5. Fee patent issued to Henderson, August 3, 1954.

6. Sale by Henderson to Judisch, July 1, 1955; the Deed was recorded on March 1, 1960.

7. Sale by Judisch to Petersons on December 2, 1965, and Munoz (formerly Mary Peterson) obtains sole ownership on November 27, 1970.
8. Decision redetermining Will, 2-19-1975.
9. Renville commenced this action on February 10, 1984.

B. Contested fact

1. Whether Defendant Munoz or any of her predecessors in interest, including the Blackfeet Tribe, had any constructive knowledge or notice of the cloud on the title of the lands at dispute herein.
2. Whether the plaintiff exhausted his administrative remedies.

Dated this 21st day of August, 1986.

JARDINE, STEPHENSON, BLEWETT & WEAVER,
By ALEX BLEWETT, *Attorneys for Defendant, Lois Munoz, Great Falls, MT.*

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing Consolidated Agreed Facts was served on the following by me by mailing a true and correct copy thereof, postage prepaid, addressed to:

Mr. Joe McKay, P.O. Box 219, Browning, MT 59417, Attorney for Plaintiff.

Mr. Philip E. Roy, P.O. Box 849, Browning, MT 59417, Attorney for Blackfeet Tribe of Indians.

Mr. Carl E. Rostad, Assistant U.S. Attorney, Federal Building, Great Falls, MT 59401, Attorney for U.S. Department of the Interior.

This 21st day of August, 1986.

JARDINE, STEPHENSON, BLEWETT & WEAVER,
By GARY W. BJELLAND, *Attorneys for Defendant Munoz.*

By letter dated February 10, 1988, a copy of this statement of "Consolidated Agreed Facts" was submitted by the Committee to the Department of the Interior by letter dated February 10, 1988, with a request for comments. In their reply to the Committee on April 10, 1988, which appears in this report under Executive Communications, the Acting Assistant Secretary for Indian Affairs stated that the Department had reviewed the Consolidated Agreed Facts and had "no objection to the facts as they have been presented."

Interior Department: Board of Hearings and Appeals

The decision of the Board of Hearings and Appeals, Department of the Interior, interpreting the will of Garrett White, is the final formal administrative action of the Department of the Interior on the Renville claim. It is important to note that the Board did not have authority to issue orders effecting title to the land and therefore directed the BIA to confer with Renville to ascertain what further action should be taken. It is also noteworthy that the Board noted that the various parties—John Renville, the Blackfeet Tribe, and the Hendersons may have suffered an inequity from which no

legal relief may be available, and it concurred in a recommendation that parties be compensated in a just and equitable fashion.

The decision of the Board of Hearings and Appeals follows:

[Plaintiff's Exhibit "L"]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF HEARINGS AND APPEALS,
INTERIOR BOARD OF INDIAN APPEALS,
Arlington, VA.

DECISION INTERPRETING THE WILL OF GARRETT WHITE

ESTATE OF GARRETT WHITE, DECEASED BLACKFEET ALLOTTEE

No. 1134, Probate Nos. 56620-32, IP BI 003A 71, and IP BI 004A 71

DECISION INTERPRETING WILL IBIA 75-48

Decided February 19, 1975

This matter comes to the Board of Indian Appeals under delegations of authority from the Secretary of the Interior appearing at 43 CFR 4.1, effective July 28, 1970, upon publication in the *Federal Register*. This is a redelegation of the authority formerly held by the Solicitor.

The route by which this matter has reached the Board is long. On December 4, 1957, Genevieve White Reevis died intestate. Because of confusion over the interpretation of a devise of certain lands in the will of Garrett White (the father of Genevieve White Reevis), the Bureau of Indian Affairs was uncertain as to what land should be included in the inventory of the estate of Genevieve White Reevis. The closing of that estate awaits the decision in this matter.

Even prior to the death of Genevieve, as indicated in Enclosures 1 through 5 of the Findings and Recommendations of Francis Elge, which are appended to this decision, serious questions had arisen as to the nature of the interest held by Genevieve in certain lands devised by her father.[1]

Pursuant to the directive of the Solicitor (Enclosure 8), who then had Indian probate authority, a hearing was held by the Examiner of Inheritance in August of 1960. The question for determination then, as now, involved the interpretation of the will of Garrett White and the procedure to be followed in probating the estate of Genevieve White Reevis.

The original directive under which the hearing was held (Enclosure 8) provided that the recommendations of the Examiner be submitted to the Solicitor for approval before a final order be issued. Since that time, jurisdiction over Indian probate matters has been

[1] Administrative Law Judge Elge, to whom the matter was referred for completion of the recommendation, issued her decision December 22, 1972. Judge Elge attached copies of pertinent documents to her decision including the full probate records in the separate estate of Mary or Nancy Greeley White Siss. Al. No. 603, Probate No. 3321-26, the predeceased wife of this decedent (Enclosure 16) and this decedent Probate No. 56620-32 (Enclosure 17). Reference to these documents is made in this decision by the assigned enclosure number. Her decision and the enclosures constitute the record in this matter.

transferred from the Solicitor to the Board of Indian Appeals. The Recommended Decision of the Examiner, now an Administrative Law Judge, therefore, was forwarded to this Board rather than the Solicitor, for approval.

The present decision is being issued in accordance with 43 CFR § 4.296. In view of the considerable time that has elapsed since the hearing was held, the Board will consider exceptions to this decision and supporting reasons for the exceptions filed by interested persons prior to the expiration of 60 days following issuance of this decision. If necessary, the Board will issue an order suspending execution of this decision to enable reconsideration.

The facts as found by Judge Elge are set forth below:

I

Garrett White, Blackfeet Allottee 1134, died testate on February 8, 1932, survived by a daughter Genevieve White Renville Reevis, Blackfeet Allottee 1135, hereinafter referred to as Genevieve. His last will and testament executed on May 27, 1929, in dispositive portion, reads:

> Second.—I give, devise, and bequeath to Genevieve White, Allottee #1135, my homestead allotment described as W/2 W/2 SW/4, Sec. 13, T. 32 N., R. 13 W.; NE/4 NW/4, Sec. 2, T. 31 N., R. 13 W., cont. 80 acres; to her I devise my inherited interest in the estate of Mary Rose White Al. #2649, described as SE/4 SW/4, N/2 SE/4, SE/4 SE/4, Sec. 21; SW/4, Sec. 22 T. 33, R. 7 W., cont. 320 acres and the NE/4 SW/4, Sec. 2, T. 31 N., NE/4 SE/4, Sec. 14, T. 32., R. 13 W., cont. 80 acres; to her I devise my inherited interest in the estate of Eli White, Al.1136, described as NE/4 SW/4, Sec. 21-33-7; SW/4 SE/4, Sec. 14-32-13, cont. 80 acres, being the homestead allotment of Eli White; and to her I devise my ½ inherited interest in the homestead allotment of Manywhitehorses Longtimegoodsuccess, allottee #1175, described as N/2 SE/4, Sec. 12, T. 36 N., R. 7 W., cont. 80 acres; I have an inherited interest in the estate of Nancy Greely White, a Sisseton, S.D., allottee #603, and I hereby devise my 3/9 interest to said Genevieve White.
>
> I wish my daughter, said Genevieve White, to hold the above described land in trust during her lifetime for the benefit of my grandson, John Renville, but she to have the use of same during her lifetime. If it be considered advisable when my grandson reaches the age of say 14 or 15 years to sell some of the smaller pieces of land, my daughter, Genevieve White, may do so, with the advice and consent of the Superintendent of Blackfeet Agency. The money secured in this way to be used for the education of my grandson and to improve or stock the remaining property.

II

The order approving will and determining heirs dated January 14, 1938, in pertinent portion reads:

> Now, therefore, by virtue of the power and authority vested in the Secretary of the Interior by the Act of June 25, 1910 (36 Stat. 855–56), as amended by the Act of February 14, 1913 (37 Stat. 678), the above mentioned written instrument, dated May 27, 1929, is hereby approved as the last will and testament of the decedent above named, and I hereby find and adjudge and declare that at the date of the above mentioned hearing the heir of said decedent determined in accordance with the laws of the States of Montana and South Dakota, and *her share in that part of his estate not disposed of my said last will and testament,* was:
>
> Genevieve White, or Manywhitehorses, daughter, Entire estate. (Underscoring supplied.)

III

The only tract of Blackfeet trust land belonging to this estate, not included in paragraph SECOND, was the "original" allotment of Eli White, deceased Blackfeet Allottee 1136, containing 317.37 acres. There not being a residuary devise, this acreage vested in Genevieve, the testator's daughter and sole heir.

* * * * *

It appears that Genevieve purported to sell and convey by warranty deeds, approved October 28, 1946, by the District Director of the Bureau of Indian Affairs, acting for the Secretary, the following properties to the Blackfeet Tribe (in trust to the United States):

1. That portion of the testator's homestead allotment 1134, described as: W½ W½ SW¼ sec. 13, T. 32 N., R. 13 W., principal meridian, Montana, containing 40 acres. (That portion described as: NE¼ NW¼ sec. 2, T. 31 N., R. 13 W., principal meridian, Montana, containing 40 acres, was not sold.)
2. Blackfeet "homestead" allotment 1136, Eli White, described as" NE¼ SW¼ sec. 21, T. 33N., R. 7 W., SW¼ SE¼ sec. 14, T. 32 N., R. 13 W., principal meridian, Montana, containing 80 acres.
3. Blackfeet allotment 2649, Mary Rose White, described as: SE¼ SW¼, N½ SE¼, SE¼ SE¼ sec. 21, SW¼ sec. 22, T. 33 N., R. 7 W., NE¼ SW¼ sec. 2, T. 31 N., R. 13 W., NE¼ SE¼ sec. 14, T. 32 N., R 13 W., principal meridian, Montana, containing 400 acres.

The Tribe subsequently exchanged 280 acres of allotment 2649, Mary Rose White, for 280 acres of unrestricted or fee land, which was transferred to the United States in trust for the Tribe. Frank Henderson, a non-Indian, and his wife Dorothy Henderson, Blackfeet Allottee 2171, received a fee patent to the 280 acres of allotment 2649. For details see enclosure 11. As of September 5, 1974,

title to the 280 acres of allotment 2649 had been transferred to Lois Peterson Munoz.

Genevieve did not sell or purport to sell any interest in two small tracts of land on the Blackfeet Reservation or any of the South Dakota interests. It appears that title to the various other tracts has remained unchanged to the present time.

The recommended decision of Judge Elge focused on three issues. The first concerns the nature of the estate created in Genevieve White; the second has to do with the validity of the deeds transferring certain properties from Genevieve to the Tribe; and the third concerns the extent of the devise of lands in South Dakota.

In writing the present decision, the Board notes that under ordinary circumstances the jurisdiction of this Board would be limited to a consideration of the interpretation of Garrett White's will. This case presents a most unusual set of circumstances, however. It is apparent from enclosures 1 through 8 that the request of the BIA for an opionion involved the interpretation of Garrett White's will and more importantly, the validity of the transfer by Genevieve to the Tribe. Indeed, the early correspondence (Enclosures 1–2) indicates that there was little question about the will of Garrett White, the main concern being a determination of the appropriate action with respect to the transfers by Genevieve to the Tribe, in order to carry out the provisions of the will. The Bureau was concerned to ascertain "what title was conveyed to the Blackfeet Tribe * * *" and "what action is necessary in order to validate title to any remainder interest owned by John Benedict Renville" (Enclosure 1). The Solicitor in requesting an interpretation by the Examiner of Inheritance also referred to recommendations as to procedures to be followed to fulfill the requirements of the Garrett White will (Enclosure 8).

With this background, it is appropriate to observe that if this case were first presented to us now, it would be sufficient and proper to do no more than interpret the will of Garrett White. That would resolve the question of title to the properties which Genevieve transferred to the Tribe. From there the BIA and the Solicitor's office could take the necessary steps to secure title in accordance with the provisions of the will and applicable law. In view of the time that has elapsed, however, and the confusion that has been encountered in trying to resolve the difficult questions raised in this case, we believe that additional discussion of the manner of resolving these issues is called for.

I. INTERPRETATION OF THE WILL OF GARRETT WHITE

The will of Garrett White (Enclosure 17–5) is written on a printed BIA standard form which is recognized as one of the earlier printed versions where the residuary clause is placed in the center of the first page rather than on the back as such forms are currently printed. The printed residuary clause on the face of this will was crossed out to provide space for the typewritten text, and there is a no paragraph disposing of the residue. This is unfortunate as such a clause might have included some enlightening language reflecting the intent of the testator which could have resolved the problem confronting us.

Stanley T. Poch, an attesting witness and scrivener of the will, in his affidavit (Enc. 17-22) described himself as "* * * clerk in the U.S. Indian Service at Browning Montana." He stated that "Garrett White requested me to draw his will * * *." The record is silent on the point, but it would appear that Stanley T. Poch was without legal training. It is necessary to consider the provisions of the will in order to arrive at a conclusion.

The first provision in paragraph "Second" appears to be an absolute bequest of various tracts of land or interests in land located in both Montana and South Dakota to the testator's daughter, Genevieve White. We must decide, then, what the effect is of the second portion of paragraph "Second" of the will, quoted above, which appears to create in Genevieve an interest less than a fee, and therefore in conflict with the first part of the paragraph which appears to be an absolute bequest.

In the second provision the scrivener used the precatory word "wish" in a manner which could well be understood to express a desire only without an intent to thereby limit an absolute devise already made. However, the further provision that she might sell "smaller pieces," not for her own benefit but to gain money for the education of the grandson, creates the impression that the testator did not intend her to have an absolute title to the property. This proposition is strengthened by the further provision that "* * * she shall have the use of * * * [the land] during her lifetime." Based on the decision of the Virginia Court in *Roller* v. *Shaver,* 178 Va. 467, 17 S.E.2d 419 the rule is stated in 4 Bowe-Parker, *Page On Wills,* § 30.22 (p. 145, 1961 ed):

> A devise of the right to "use" land does not give an absolute estate in the principal.

There is other conflicting language within paragraph "Second" of the will. The term "trust" is used, which standing along would create a fiduciary relationship, with one person holding title for the benefit of another. In the present will, the trust is "* * * for the benefit of my grandson * * *," but with the limitation, the daughter, Genevieve, "to have the use * * * during her life time * * *." The latter provision, giving the daughter the benefits of ownership (rents and profits) during her lifetime is clearly in conflict with the concept of a trust. Moreover, although the word "trust" is used, no provision is made for distribution of the properties or any benefits to the grandson, except that an unspecified portion of the proceeds of sale "* * * some of the smaller pieces * * *" could be used for his education.

It could be argued that a power of sale is contained in the phrase, "If it be considered advisable * * * to sell some of the smaller pieces * * * my daughter * * * may do so with the advice and consent of the Superintendent * * *." This language does not specify what need of the grandson is to exist, what rise in the price of land or fall in price of crops and livestock is to occur which could cause the power to become operative. No one is specifically designated to make the judgment as to the advisability of sale, and of which and how many "smaller pieces." The duration of the power is not set forth, although it would appear the intent was to have it terminate at some undetermined time as the grandson

grew older upon passing his need for education. We cannot find that a valid power of sale was created.

This view is supported by the record, from which it appears that John Renville, born June 26, 1924, had attained majority in 1946 when the transfers to the Tribe took place. There is no indication that the sale was approved as an execution of the purported power, with the remainder interest in mind or that the conditions were complied with (See Enclosure 1).

The will in question cannot be considered the work of a trained lawyer or even that of an ill-trained one, and with nothing to the contrary appearing in the record, it is presumed here that the scrivener was not a lawyer.

It is stated in 4 Bowe-Parker, *Page on Wills* § 30.9 (p. 65, 1961 Ed.)

> If the will is drawn by one who is not a trained lawyer, the court will be more inclined to assume that the will is written in the language of the layman and will regard the language of the will be used in its popular rather than in its technical meaning. (Citations of authority omitted).

A lawyer, by his training and experience, knows the necessity for the use of the mandatory directive where intent is to be truly expressed. A layman is less inclined to use mandatory or preemptory language in his everyday transactions. A layman is not apt to consistently change from a popular to a more technical style even in his effort to prepare a formal legal document. In polite conversation and writing in the everyday transactions of life and business, a layman is prone to give directions to his subordinates and associates as "John, today I *wish* that you would move that car; complete the task I gave you last week, etc." These are given and received as commands as discussed in *Bosworth, et al.* v. *Kilbourn, et al.,* 304 Ky. 628, 201 S.W. 2d 904, 906 (1947).

In technical writing the world "wish" is generally used as an expression of desire, or to imply discretion, and it acquires a mandatory meaning only when the context requires that it be so. Applying the above rule then to the context, we find that it was the testator's intent to give a mandatory directive here, and that the word "wish" was used in its mandatory sense.

Having made this finding, we turn to the further rule found in 4 Bowe-Parker, *Page On Wills* § 30.10 (pp. 80, 81, 1961 ed.):

> It has been said that the entire will is to be taken into consideration if particular causes are ambiguous or uncertain. The duty of the court to take the entire instrument into consideration is said to precede its right to resort to technical rules of construction. This principle is however a general statement of the tendency of the courts when they are trying to ascertain the intention of the testator. It is not an arbitrary rule which displaces his intention.

The language used in the will was insufficient to create a trust. A testamentary trust naming a private trustee will not be recognized by the Secretary where the corpus is to remain subject to the subsisting statutory trust in the United States. 36 Op. A.G. 98, 100 (October 25, 1929).

We therefore find that the estate created by the devise to Genevieve White was limited to a life estate with remainder over to the grandson of Garrett White, John Renville.

II. VALIDITY OF TRANSFERS BY THE TRIBE

Having found that the devise to Genevieve was limited to a life estate, it follows that she was without power to convey a greater estate. Although this Board lacks authority to resolve all issues in this case, the additional discussion should suggest the further action that should be taken to provide a remedy for the remainderman.

From the above finding it follows further that the Blackfeet Tribe never received fee title, but held only a life estate during the life of Genevieve, and a color of the equitable title. The Hendersons as patentees may be said to have held the fee title as constructive trustees for John Renville, and such title would then have been transferred to Lois Peterson Munoz, in constructive trust.

III. DEVISE OF LANDS IN SOUTH DAKOTA

Judge Elge's recommended decision raised the further problem regading the effect of the language in the first provision of the will:

> * * * I have an inherited interest in the *estate* of Nancy Greely (sic) White, a Sisseton, S.D. allottee #603, and I hereby devise my 3/9 interest to said Genevieve White. (Emphasis supplied)

Nancy Greeley White was the testator's predeceased wife who died intestate. The testator had inherited an undivided statutory ⅓ portion of her estate. At her death, Nancy White's estate consisted of fractional undivided interests in three allotments which she herself had inherited from others. These interests were in land on the Sisseton Reservation in South Dakota.

Judge Elge stated in her decision, in paragraph VII,

> * * * At the time the will was made, Indian agency personnel used "estate" for either an entire estate consisting of interests in several allotments or for a single allotment, causing frequent difficulty in interpreting a will where either meaning could be applied. In the Garrett White estate, the only interpretation that can be made is that the testator devised all interests received by him from the estate of Nancy Greeley White.

Under the circumstances appearing in the record, it is our conclusion that the recommended decision of Judge Elge is hereby affirmed, and that the conclusions already announced herein shall be applied to all of the testator's South Dakota interests as well as the Montana interests passing by his will.

Having reached these conclusions, the inventory in the Estate of Genevieve White Renville Reevis is now stabilized and includes all unsold land inherited by Genevieve from Garrett White by intestate succession and the probate of her estate should be completed.

Further, in accordance with this decision, the Superintendent shall make immediate distribution to John Renville of all land passing to John Renville under the will of Garrett White which re-

mains in the estate of Genevieve White, and all undistributed money in the Superintendent's control which was derived as income after Genevieve's death from this property.

Having settled the title to the various tracts and interests, attention is directed to that phase of the instruction issued by the Solicitor to the Judge [formerly Examiner of Inheritance] on May 14, 1958 (Enclosure 8). The Judge was required to make recommendation not only as to the final determination of the title status, but also as to the nature of the relief to be provided, in order to fulfill the requirements of the will of Garrett White. As explained below, the Office of Hearings and Appeals has succeeded to the quasi-judicial functions formerly residing in the Solicitor.

Prior to the creation of the Office of Hearings and Appeals, with its component boards of appeal (including the Board of Indian Appeals) and Hearings Division, the Solicitor's delegated authority included the quasi-judicial functions of the Department. In his memorandum of February 4, 1970, to the Secretary, Solicitor Mitchell Melich recommended the creation of the Office of Hearings and Appeals with appropriate delegations of authority to enable that office to perform the Departmental judicial functions. He argued:

> * * * that our present appellate system is institutionally oriented and violates the spirit if not the letter of the Administrative Procedure Act. Many critics point out that the solicitor performs the investigative and prosecuting functions of the Department, and also has the delegated authority to render the final decision when an adverse result is appealed to the Secretary.
>
> * * * * *
>
> An Office of Hearings and Appeals will be established at the Department level * * *. Decisions and orders of the Boards * * * will be the final Departmental action and shall exhaust the administrative remedy * * *. No other Office, Bureau, Commission or Board of the Department will participate in or advise as to the decision of the Office of Hearings and Appeals in any proceeding. However, the Director of the Bureau having administrative responsibility may be represented in appeals before the Office of Hearings and Appeals by the Solicitor to insure that matters relating to the public interest will be fully presented.

The spirit and purpose of this memorandum were incorporated into the Secretary's delegation of authority to the Director and the boards of the Office of Hearings and Appeals, effective July 1, 1970, published in 38 F.R. 12081 on July 17, 1970, and appears as 43 CFR 4.1. Under this delegation, the Director of the Office of Hearings and Appeals has authority to decide all the issues presented by this appeal.

John Renville appeared at the hearing conducted by Examiner McKee on August 23 and 24, 1960, on the Blackfeet Reservation. He was represented by Attorney John Moore. At that time certain demands for compensation and restitution were made (Enclosure 15). The matter remained unresolved and under negotiation and Mr. Wilbur Werner, attorney, wrote a demand letter to the Super-

intendent of the Blackfeet Reservation on December 8, 1969 (Enclosure 11). A response (Enclosure 12) was made by Examiner McKee in which he raised the question of which attorney was to represent the claimant. Mr. Werner replied on July 24, 1970 (Enclosure 14) that both attorneys would represent Renville and he set forth a proposition for restoration of Renville's position. He at that time had in hand the Superintendent's December 23, 1969, report (Enclosure 13) as to rental income from the land over the years.

On August 31, 1970, Examiner McKee became Chairman of the Board of Indian Appeals and this matter was transferred to Judge Elge for completion and for recommendation. Upon this record, the various proposals and demands of John Renville are inconsistent and Judge Elge's recommendations are in general form. We concur in the recommendation for restoration of the loss which Renville has suffered, but refrain from the issuance of a specific order in the matter. The Bureau of Indian Affairs, together with the Solicitor, should confer with John Renville to ascertain precisely what it is that he demands. Thereafter, the necessary legal actions can be initiated to restore title to the rightful owner, consistent with this decision.

A final observation is appropriate with respect to the concluding recommendation of Judge Elge, that "The Blackfeet Tribe, John Benedict Renville, and the Hendersons (Frank and Dorthy) [or their successors in interest] be compensated as may be just and equitable in the premises." As far as the record indicates, acting innocently, these parties may have suffered an inequity from which no legal relief may be available. The Tribe, for good consideration, purchased from Genevieve title to property that was not hers to convey. Therefore, the Tribe could not have received good title. The Tribe thereafter purported to transfer portions of these lands to the Hendersons, who subsequently received a fee patent to the land, and who in turn, purported to transfer the fee to Lois Peterson Munoz. In each case the transactions were void and the fee patent is subject to rescission.[2] While the Board endorses the general recommendation for just and equitable compensation, the matter of restitution of the purchase price is not in issue here and is not properly a part of the issue of the cancellation of the fee. *Heckman* v. *United States,* 224 U.S. 413 (1912), modifying and affirming in part, *United States* v. *Allen,* 179 Fed. 13 (8th Cir. 1910).

Now, therefore, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 211 DM 13.7, 35 F.R. 12081, 43 CFR 4.296, it is ordered that distribution of Garrett White's estate shall be made in accordance with this decision herein.

MITCHELL J. SABAGH, *Member.*
ALEXANDER H. WILSON, *Member.*

Enclosures.

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[2] In the view taken in this decision, the fee patent cannot be valid. The remainder interest in the allotted lands which passed under the will of Garrett White, after the life estate of Genevieve terminated, belonged to John Renville. The fee patent could not have issued, therefore, without the consent of the allottee. *Federal Indian Law* (1958), pp 787–788. There is no indication in the record that John Renville ever gave such consent. The rule restricting the alienation of allotted lands "can produce harsh results in that the equities of a non-Indian purchaser in good faith for valuable consideration are not to be considered, * * * as against the heirs of an Indian allottee who received full consideration for his lands." *Federal Indian Law* (1958) p. 787, citing *United States Gilbertson,* 111 F.2d 978 (7th Cir. 1940).

[Plaintiff's Exhibit "M"]

August 24, 1977.

SUPERINTENDENT,
Blackfeet Indian Agency,
Browning, MT.

DEAR SIR: This is in reference to my land case, Estate of Garret White, Deceased Blackfeet Allottee No. 1134.

This is to advise you I am no longer retaining any outside attorneys to handle this matter, but instead, am looking to the Bureau to handle this case for me.

The Bureau in their memo stated or suggested three options they felt this land settlement could be handled. I am requesting that the land be returned to me, as the rightful owner plus the income and interest.

I trust the Government (BIA) will move forward in this settlement in my behalf with full force, and return to me what is rightfully mine to enjoy.

Sincerely

JOHN BENEDICT RENVILLE.

Title IV of H.R. 2677 was added by the Committee in markup. Offered by Senator Evans, it provides for the administrative transfer of Federal lands at certain sites along the Columbia River to the Department of the Interior for the use of Indian treaty fishermen to attain an equitable satisfaction of the United States' commitment to provide lands for Indian treaty fishing in lieu of those inundated by flooding caused by the contruction of the Bonneville Dam.

In the 1850's the Indians of the Northwest ceded title to certain lands in the Columbia River basin in exchange for a commitment by the United States to protect and preserve the rights which the Indians reserved to fish the Columbia River in their usual and accustomed fishing areas. The United States Supreme Court has since ruled that the Indians' right to fish in their usual and accustomed fishing areas includes the right to free and unencumbered access to those sites. *United States* v. *Winans,* 198 U.S. 371 (1905).

In the 1930's the United States constructed the Bonneville Dam on the Columbia River which caused the inundation of approximately 40 of the Indians' traditional fishing sites and severely restricted access to much of the river. In 1939 a settlement agreement between the treaty Indians and the United States provided that the United States would provide more than 400 acres of lands at six described sites along the Columbia in lieu of those sites inundated. To date, the United States has provided five sites totaling approximately 40 acres. These sites are currently referred to as "in-lieu" sites. Subsequently, more dams were built on the Columbia, including Dalles, John Day, and McNary, causing the inundation of more fishing areas.

In 1973, as a result of litigation initiated by treaty tribes after the United States proposed a project to alter the water levels of the pools behind the dams, a settlement Order was entered by the U.S. District Court of Oregon. The judgment and order noted that the

Secretary of the Army and the Secretary of the Interior agreed to propose legislation providing for the acquisition and improvement of additional sites. The agreement of the two Departments to propose this legislation was the key to attaining the tribes' consent in the court order and project. Legislation was forwarded to the Congress in 1974, but no action was taken by the Congress at that time, and no legislation has been forwarded since that time.

Presently, all five existing in-lieu sites are within the Bonneville Pool, the demography of which forces access to these sites and those upriver in the John Day, Dalles, and McNary Pools through private lands and public parks, increasing tensions between the Indians and the general public and taxing public park facilities which are not equipped for Indian treaty fishing activities. Highways, railroads, and fences further hinder access. Also, a phenomenal recent influx of windsurfing or boardsailing in the Columbia Gorge has increased overcrowding and tensions. Finally, facilities at the existing in-lieu sites are in dire need of repair.

Title IV of H.R. 2677 provides a vehicle for the United States to satisfy its commitment to the Indian tribes which exercise fishing rights on the Columbia River and whose traditional fishing places were inundated by flooding caused from the construction of the Bonneville Dam. The provision designates certain sites and authorizes the acquisition of additional sites from willing sellers to allow more and better access to the river for Indian and non-Indian fishermen, to ease tensions between the Indian and non-Indian fishermen and to ease overcrowding of access sites by fishermen and recreationists along the Columbia River. A letter from Senators Hatfield and Evans to the U.S. Army Corps of Engineers dated August 3, 1988 and the reply from the Corps dated September 6, 1988 follow:

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC, August 3, 1988.

Major General HATCH,
Department of the Army,
U.S. Army Corps of Engineers, Washington, DC.

DEAR MAJOR GENERAL HATCH: As you may be aware, on April 19th the Senate Select Committee on Indian Affairs held oversight hearings on the management of Indian fisheries on the Columbia River. At the hearing the Committee learned of the United States' unfulfilled obligation to provide fishing sites along the Columbia River in lieu of sites inundated by construction of the Bonneville Dam. In his testimony before the Committee, Morgan R. Rees, Deputy for Policy, Planning and Legislative Affairs, informed us that the Corps would work to identify additional fishing sites and, within its existing authority, to make additional sites available for Indian fishermen.

Our offices have since been in contact with the Corps' district office in Portland, Oregon to develop plans for transferring additional in-lieu sites to the Bureau of Indian Affairs as soon as possible. The district office accommodated members of our staffs on a recent visit to the Northwest concerning the in-lieu fishing sites. We wish to commend the Corps for recognizing a continuing obliga-

tion on the part of the United States to the treaty fishermen, a position which we believe has a strong moral and legal basis.

We understand that the Corps has authority to transfer sites that the Corps now owns administratively to the Department of Interior. Such a transfer normally requires an Environmental Assessment but not an Environmental Impact Statement. Furthermore, we understand that, an exchange of lands necessary for project purposes such as this may be entirely exempt from the EA and EIS requirements. At the very least, because all the sites are currently used as fishing sites by the treaty fishermen, the transfer should constitute no significant change in land use or environmental impact.

The Portland District Office has undertaken a map study and title searches to clarify the legal descriptions of the sites so that all interested parties are treated fairly. It is also our understanding that should an EA be necessary, a first set of sites will be consolidated into one EA to expedite their transfer.

We are most anxious for the Corps to effectuate the transfer of sites before further tension and overcrowding causes irreparable harm to the many parties with an interest along the Columbia. Please inform us of progress since the Indian Affairs Committee hearing on the Corps' administrative transfer of the agreed upon sites.

Also, please send us periodic updates and copies of any reports being developed in conjunction with this project. We will greatly appreciate the Corps' continued diligent and cooperative efforts in bringing this project to fruition.

Sincerely,

MARK O. HATFIELD,
U.S. Senator.

DANIEL J. EVANS,
U.S. Senator.

DEPARTMENT OF THE ARMY,
U.S. ARMY CORPS OF ENGINEERS,
Washington, DC, September 6, 1988.

Hon. DANIEL J. EVANS,
U.S. Senate,
Washington, DC.

DEAR SENATOR EVANS: This is in response to your letter of August 3, 1988, to Lieutenant General Hatch expressing interest in the designation of additional in-lieu fishing sites on the Columbia River in Oregon and Washington. General Hatch has asked me to respond on his behalf. The Army Corps of Engineers is aware of the request of the Umatilla, Yakima, Warm Springs, and Nez Perce' tribes for additional in-lieu fishing sites. We share your concern for overcrowding which results from limited access to the lands and waters of the Columbia River and increased use of the river by both Indian fishermen and the general public.

We respectfully offer the following points of clarification regarding any continuing legal obligation of the Corps of Engineers to provide additional in-lieu fishing sites, and our authority to directly transfer projejct land to the Department of the Interior (DOI).

As presented by Mr. Morgan R. Rees, Deputy for Policy, Planning and Legislative Affairs, Office of the Assistant Secretary of the Army (Civil Works) in his testimony before the Senate Select Committee on Indian Affairs, any legal obligation of the Corps of Engineers to acquire in-lieu fishing sites under authority of the 1945 Rivers and Harbors Act was fulfilled with the acquisition of the in-lieu fishing sites on the Bonneville pool. Technically the Corps of Engineers has met its legal obligations to provide in-lieu fishing sites. However, we are aware that there is a continuing interest to designate additional in-lieu fishing sites.

In regard to the concept of administrative transfer of Federal project lands, the authority to directly transfer project lands to the Department of the Interior is very limited as is fully described in the following paragraph. This point was raised in meetings and conferences over the last two months with Columbia River Inter Tribal Fish Commission (CRITFC), Bureau of Indian Affairs (BIA), Tribes, and members of your staff. A direct transfer of project lands for in-lieu fishing site purposes would require Congressional authorization.

We have the potential of dealing with three categories of lands for in-lieu fishing sites: Federally owned lands excess to project needs (should such be identified), and non-Federal lands which would need to be acquired. Lands needed for authorized project purposes cannot be excessed and therefore cannot be transferred to the Department of the Interior (DOI) absent Congressional authorization. If lands excess to project needs are former Indian lands, as defined by statute, then the Corps, in accordance with GSA procedures, could transfer these excess lands to DOI. If the lands are excess but not former Indian lands, then the land would be reported to GSA which could in turn transfer it to DOI. Some proposed sites may require the acquisition of additional land, an action for which we have no authority and would need legislation.

In response to your question of our progress since the April 19, 1988, Subcommittee Hearing, the Portland District has coordinated with CRITFC, BIA and appropriate Indian tribes, and is accelerating the master plans for the mid Columbia River projects (Bonneville, The Dalles, and John Day) to identify possible in-lieu fishing sites. The Master Plan is the basic document guiding Corps of Engineers responsibility pursuant to Federal laws to preserve, conserve, restore, maintain, manage, and develop the project lands, water, and associated resources.

The master planning will begin in Fiscal Year 1989. Tasks will include detailed scoping, resource inventory, land use analysis, agency and public involvement, and land use designation for Corps managed lands along the Columbia River. Potential in-lieu fishing sites will be evaluated in this context. The results could serve as the basis for any legislative proposal for transfer of land. The master planning process includes public participation which weighs competing requirements for the limited resources. As with National Environmental Policy Act (NEPA) documentation, public participation is an integral part of master planning.

While there is no legal requirement for NEPA documentation in the master planning process, the issues raised may require some form of NEPA compliance documentation. Although the transfer of

land to other Federal agencies is categorically excluded from NEPA documentation, 33 CFR Part 230.9 goes on to say that a district commander should be alert for extraordinary circumstances which may dictate the need to prepare an EA or EIS. Such circumstances may exist in that the District has already received comments from other members of the public. This would certainly seem to require that the public be given a chance to participate in our master planning process. Public involvement is a critical element of master planning which the public has come to expect. Part 230.9 also states that categorical exclusion does not exempt the action from compliance with any other Federal law.

On July 7 1988, Portland District staff met with Mr. Richard Monet of your staff, and toured existing and potential in-lieu fishing sites. On July 25, 1988, Portland District staff met with staff of CRITFC, BIA representatives of the Tribes, and Ms. Susan Long of Senator Hatfield's staff. At that meeting, Portland District staff, in further explanation of prior testimony, restated that a master plan study would be required prior to identification of any additional new in-lieu fishing sites on the Corps of Engineers project lands. On August 5 and 10, 1988, the District staff met with staff of the CRITFC and representatives of Tribes to more definitively describe the thirty sites proposed in the CRITFC report and to map them.

Any recommendations will be based on regional needs, agency and public involvement, and resource suitability. We recognize that this process does not provide for immediate transfer of lands to the DOI. However, it will assure that all potential sites are considered and evaluated in a context of regional needs, agency, and public desires and within all federal laws, regulations, and policies. The Indian Tribes will be asked to best serve all regional interests and will provide for the optimum use of the limited public lands and waters of the Columbia River.

We will continue to inform you of our progress. Thank you for your interest in the Corps of Engineers and the Columbia River Basin.

Sincerely,

PATRICK J. KELLY,
Brigadier General, U.S. Army, Director of Civil Works.

LEGISLATIVE HISTORY

H.R. 2677 was introduced June 11, 1987 by Representative Rhodes of Arizona. The House Interior and Insular Affairs Committee held a hearing on the measure on September 29, 1987 and it passed the House on December 7, 1987. The bill was referred to the Select Committee on Indian Affairs on December 8, 1987.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on September 21, 1988, by unanimous vote and with a quorum present, recommends that the Senate pass H.R. 2677, with an amendment in the nature of a substitute.

SECTION-BY-SECTION ANALYSIS OF H.R. 2677 AS AMENDED

TITLE I—INDIAN REORGANIZATION ACT AMENDMENTS

Section 101 amends section 16 of the Act of June 18, 1934 by striking all the previous language and including in lieu for new subsections which provide as follows:

Subsection (a) states that any Indian tribe shall have the right to adopt an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult members of the tribe at a special election called by the Secretary of the Interior and approved by the Secretary.

Subsection (b) provides guidelines for the revocation of such constitutions and amendments thereto.

It is the intent of the Committee that the provisions of subsections (a) and (b) relating to adoption of new constitutions, amendments to such new or existing constitutions, and revocation of these constitutions shall be available to all Indian tribes which have previously organized under the 1934 Act or are eligible to organize under such Act.

Subsection (c)(1) provides that within 180 days after the receipt of a tribal request for an election to ratify or revoke a constitution, the Secretary shall call and hold such election. In the case of an amendment to such constitution, the Secretary is required to call and hold an election within 90 days after the receipt of such tribal request.

Subsection (c)(2) provides that during the time periods established under paragraph (1), the Secretary shall provide technical assistance to a tribe, upon request, and review the final draft of any proposed constitution or amendment to determine if any provision is contrary to federal law.

Subsection (c)(3) provides that at least 30 days before calling the election, the Secretary shall notify the tribe whether and in what manner the proposed constitution or amendment has been found to be contrary to federal law.

Subsection (d)(1) provides that if an election called under (a) results in adoption by the tribe of a proposed constitution or amendment, the Secretary shall approve such document within 45 days after the election unless he finds such document to be contrary to federal law.

Subsection (d)(2) provides that the Secretary's approval shall be considered as given if he does not act on such proposed constitution or amendment. This paragraph also gives the appropriate party a right to bring an action in Federal District Court in order to enforce the provisions of this section.

Subsection (e) provides that, in addition to all powers vested in any Indian tribe by existing law, the constitution adopted by such tribe shall also vest in such tribe certain additional rights and powers. This subsection repeats identical language found in the 1934 Act.

Section 102 defines the terms "appropriate tribal request" and "contrary to federal law" for purposes of this Act.

Section 103 provides that nothing in this Act is intended to amend, revoke or affect any tribal constitution, bylaw or amendment ratified and approved prior to this Act.

TITLE II—MISCELLANEOUS

Section 201 amends the Old Age Assistance Claims Settlement Act to provide for a $10 minimum payment (not including interest) to an heir or subsequent heir under the Act. This $10 minimum is estimated to reduce the number of payments by 70 percent or more and to significantly reduce the cost of carrying out that Act.

Section 202 corrects an error in the land description in the recently passed bill to establish a reservation for the Grand Ronde Community (P.L. 100-425).

Section 203 makes effective upon enactment a judgment plan submitted by the Department of the Interior on July 10, 1988 for the use of funds awarded to the Choctaw and Chickasaw Nations. Under the provision in 25 U.S.C. 1405(a), the plan would be effective "at the end of the sixty-day period (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a date certain) beginning on the day such plan is submitted to the Congress." There are not sufficient days left in the 100th Congress for the plan to become effective under the foregoing provision. Therefore, legislative action is necessary to make the plan effective. In addition, the proviso makes changes in the Plan to conform it to the budgetary procedures of the Chickasaw Nation in line with Resolution No. 88-121 of the Chickasaw Tribal Legislature adopted and concurred in by the Nation's Governor on September 16, 1988.

Section 204 amends the Act which provided for the division and transfer of the Chilocco Indian School property in Oklahoma to six tribes to make it clear that the amount of funds to be transferred to the tribes is the unexpended balance of the income from the school property (including any investment income).

Section 205 amends an Indian employment preference provision to conform the provision to a similar provision (25 U.S.C. 2011(f)) as amended by section 5112(a) of Public Law 100-297 relating to education positions in the Bureau of Indian Affairs. The amendment enables Indian tribes to waive Indian preference in the initial hire of employees as well as in the promotion or reassignment of current employees in the Bureau of Indian Affairs and the Indian Health Service.

Section 206 amends the Buy Indian Act to make it clear that it applies to procurement of printing by the Bureau of Indian Affairs and the Indian Health Services.

Section 207 is a technical amendment to enable waste treatment aid to be provided to former Indian reservations in Oklahoma and to Alaska Native Villages.

Sections 208 through 212 make technical changes to the Indian Self-Determination and Education Assistance Amendments of 1988 (H.R. 1223) recently enacted by Congress.

Section 213 amends the 1964 Yakima Land Act to allow the Secretary of the Interior to transfer land acquired under the Act to

trust status. The purpose of this amendment is to place the Yakima Indian Nation in the same position as all other tribes in the United States regarding the authority of the Secretary of the Interior to acquire land on behalf of the Yakima Nation and its members and to have such land placed in trust status.

Section 5 of the Indian Reorganization Act (IRA) (48 Stat. 985, 25 U.S.C. 465) authorizes the Secretary of the Interior to "acquire through purchase, relinquishment, gift, exchange, or assignment any interest in lands for . . . for the purposes of providing lands for Indians." Section 2202 of the Indian Land Consolidation Act of 1983 (96 Stat. 2517; 25 U.S.C. 2202) extended the above referenced language to all tribes regardless of whether they were organized pursuant to the IRA. However, 25 U.S.C. 2202 also contains a provision stating that it does not supercede any other provision of law relative to land acquisition for any specific tribe.

Language in the Yakima Land Enterprise Act (25 U.S.C. 608) which was originally enacted in 1955 and amended in 1964, prohibits the Yakima Nation from being able to purchase fee land and to having it placed in trust. The purpose of the original Yakima Act was "for the purpose of effecting consolidations of land situated within the Yakima Indian Reservation in the State of Washington, between the Yakima Tribes of Indians and individual members of the tribes and other Indians, for the mutual benefit of the tribes and the individual members thereof. . . ." (69 Stat. 392). As a result of the stipulation in the Yakima Act (25 U.S.C. 608(c)), the Yakima Nation has experienced great frustration in its attempts to consolidate its land holdings, to plan for meaningful economic growth and to carry out its governmental duties in a like manner to other tribes. The Committee is aware of no other tribe in the country with such an unusual restriction.

The Committee does not intend that this amendment be construed to affect or supersede any other provision of Federal law relative to land acquisition for any specific tribe or reservation other than the Yakima Indian Nation. The amendment is also not intended to be construed as making the Yakima Nation a so called "IRA tribe", as the tribe has previouly voted not to organize under the provisions of the IRA.

Section 214 makes technical amendments to the 1934 Indian Reorganization Act to apply certain provisions of Section 5 of the Act to purchases of land for the Yakima Indian Nation under the Act of July 28, 1955 (69 Stat. 392; 25 U.S.C. 608 et seq.).

Section 215 makes a technical correction to the Native American Programs Act that was reauthorized last year to reflect the intent of Congress that appropriations for the program must exceed the funding level for fiscal year 1987 in order for Native American Pacific Islanders to be eligible for funding.

Section 216 amends the Agua Caliente Equalization Law to provide that its treatment of allotments then contemplated to be condemned for public purposes be extended to other allotments that were or may be subsequently condemned for public purposes. Compensation is treated as trust property and any past or future income derived from specified investments of such compensation is not taxable as personal property and treated for all purposes as if

such were derived from the leasing or other direct utilization of trust land.

Section 217 corrects an error of the Bureau of Indian Affairs with respect to first year funding for the Tiospa Zina Indian School at the Sisseton-Wahpeton Reservation in South Dakota. Through an appellate process in the BIA, it has been determined that the school should have received start-up costs as a new contract school in fiscal year 1987. The amendment directs payment from the appropriation from which the school should have received its funds.

TITLE III—BLACKFEET TRUST LANDS TRANSFER

Section 301(a) provides compensation for and in settlement of all claims arising as the result of alleged errors in the Secretary of the Interior's approval of purported conveyances of land involved in the will of Garret White (also known as Many Whitehorses) by directing the Secretary of the Treasury to pay as a settlement under 31 U.S.C. 1304(a)(1) not to exceed the following sums:

(1) $50,000.00 to John Benedict Renville of the Blackfeet Indian Reservation.

(2) $58,500.00 to be held in trust by the Secretary of the Interior for the Blackfeet Tribe of the Blackfeet Indian Reservation in Montana.

(3) $127,000.00 to Mary Lois Peterson Munoz of Cut Bank, Montana.

(4) $165,535.00 less attorney fees as provided in this Title, to be held in trust by the Secretary of the Interior for John Benedict Renville.

(b) This subsection declares that the payment and acceptance of such compensation shall be in full satisfaction of all claims that the receiving party has against the United States or any employee or officer thereof, and against any other party, in connection with the purported sale of some 520 acres of trust land involved in the will of Garret White to the Blackfeet Tribe which was approved October 28, 1946. This includes the purported exchange of some 280 acres of the land by the tribe for other land, and the purported acquisition of the 280 acres by Mary Lois Peterson Munoz.

(c) This subsection provides the following conditions precedent to any payment under subsection (a):

(1) Each of the parties shall execute such releases, conveyances, or other documents as the Secretary of the Interior determines are necessary to carry out this Act. The Secretary is authorized to approve and execute on behalf of the United States such documents as are necessary to carry out this Act.

(2) The Blackfeet Tribe shall transfer its interests in the remaining approximately 240 acres of land acquired by the Tribe on October 28, 1946, to the Secretary of the Interior who shall take the interests in trust for John Benedict Renville.

(3) Mary Lois Peterson Munoz shall transfer to the Secretary of the Interior all of her interests in the approximately 280 acres of land which had been acquired by the Blackfeet Tribe on October 28, 1946, to the Secretary of the Interior who shall take the interests in trust for John Benedict Renville.

(4) A final order has been entered in the civil action entitled *John Benedict Renville* v. *Blackfeet Tribe of Indians, et al.,* No. CV-84-41-6F, in the United States District Court for the District of Montana dismissing with prejudice all claims, cross-claims, counterclaims, third-party claims, and all other claims arising out of such civil action.

(d) This subsection provides that the land acquired in trust by the Secretary under the Act shall be subject to the laws that would apply if the sale of October 28, 1946, had not taken place.

(e) This subsection provides that the amounts paid under subsection (a) of this Act are tax exempt pursuant to section 7 of the Act of October 19, 1973 (87 Stat. 468; 25 U.S.C. 1407).

(f) This subsection provides that the amounts paid under subsection (a) of this Act to Mary Lois Peterson Munoz shall be considered as funds for condemnation proceedings as provided for in Section 1033 of the Internal Revenue Code.

(g) This subsection limits the amount of attorney fees to be paid for services rendered John Benedict Renville in connection with any claim described in this bill to 10 percent of any amounts paid John Benedict Renville under subsection (a) of the Act, including the value of the land returned, such attorney fees to be paid from the funds awarded Renville under this Act.

(h) This subsection directs the Secretary of the Interior to have made an appraisal of the value of the lands described in subsection (b) as of the date of enactment of this Act. The subsection further provides that the sums paid to the Blackfeet Tribe and Mary Lois Peterson Munoz under subsection (a) of the Act shall not exceed such appraisal values, plus a reasonable attorney's fee, not to exceed 10 percent of such award, any contract to the contrary now withstanding.

TITLE IV—COLUMBIA RIVER TREATY FISHING ACCESS SITES

Section 401(a) provides for the immediate administration of several sites by the Federal agency owning them for the use of treaty fishing by members of the named Indian entities. The maps to which the Act refers have been prepared by the Army Corps of Engineers, at the request of the Committee, in conjunction with the named Indian tribes. It is the intent of the Committee that the lands be managed by the Federal agency currently holding them for the purpose of access to fishing sites, and that improvements to the sites be made, from the time of the passage of the legislation. In the event that privately owned lands appear to be represented as sites on the numbered maps, only Federally owned lands are subject to this subsection.

Section 401(b)(1) requires the Secretary of the Army to identify any and all lands for sale adjacent to the Bonneville Pool and to acquire at least six sites adjacent to the Bonneville Pool to be provided as in-lieu sites before any equitable satisfaction is attained for the United States' commitment to provide in-lieu sites in the Bonneville Pool. It is understood, of course, that the Secretary of the Army will consult with the named Indian entities before acquiring any lands under this subsection.

Paragraph (2) of subsection (b) requires the Secretary of the Army to improve as defined the lands under subsection (a) and lands acquired under Paragraph (1) of subsection (b) at least to the level provided the existing in-lieu sites and to the standards of improvements provided in the National Park System for modern camping facilities. The Committee also expects that facilities will be constructed and maintained in a manner consistent with the Columbia River Gorge Commission Scenic Area Management Plan if the sites are located within the external boundaries of the Columbia River Gorge National Scenic Area established pursuant to Public Law 99-663. This section also provides that the Federal agency currently owning the lands may negotiate an agreement concerning operation and maintenance costs with the Department of the Interior to transfer the sites, after improvements have been made, to the Department of the Interior for maintenance and management purposes.

Paragraph (3) of subsection (b) requires the Secretary of the Army to make certain improvements at two named sites.

Section 401(c) requires the United States to treat the costs of implementing Paragraphs (2) and (3) of subsection (b) as project costs of the Columbia River projects and to allocate those costs to the respective purposes of those projects in accordance with existing law applicable to allocation of project costs.

Section 401(d) authorizes up to $2 million to implement the purposes of (b)(1) of this title.

Section 401(e) grants the Secretary of the Interior the right of first refusal to accept any lands that any Federal agency of the United States makes available, provided that the total acreage of lands provided as in-lieu sites under subsections (a), (b), and (e) not exceed 360 acres, so that the total acres of in-lieu sites in the Bonneville Pool, including existing sites, not exceed 400 acres.

The Committee understands that the Corps of Engineers is currently undergoing a master planning process and that as a result of that process, some of the lands that the Corps now owns may be determined to be no longer needed for project purposes. Other Federal agencies often take similar planning exercises. If, after consultation with the named tribes, the Secretary of the Interior determines that any lands that would be declared excess would be suitable for fishing sites, he should take the necessary steps to inform the agency and the lands should be designated as new in-lieu sites and immediately managed by that agency as fishing sites for the named tribes, improved by the Department of the Army, and transferred to and maintained by the Department of the Interior.

Section 401(f) provides that nothing in this Section shall affect any claims the named tribes or any other tribes may have concerning the Dalles, John Day, McNary Dams or any other projects on the Columbia River except the Bonneville as provided for in subsection (e). This subsection also provides that this Section does not affect the legal status of the existing in-lieu sites and further assumes that the legal status of the newly provided in-lieu sites will be entirely consistent with those of existing sites.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate of H.R. 2677, as amended, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 2677, an act to establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987).

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM, *Acting Director.*

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: H.R. 2677.

2. Bill title: An act to establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987).

3. Bill status: As ordered reported by the Senate Select Committee on Indian Affairs, September 22, 1988.

4. Bill purpose: Title I of H.R. 2677 would establish procedures and set time limits for the Secretary of the Interior for reviewing, holding elections on, and approving tribal constitutions and bylaws. Title II of the act would make a number of technical amendments to laws affecting Indians. Title III would direct the Secretary of the Treasury to pay amounts totaling not more than $401,035 to certain private parties in settlement of claims arising out of an error by the Secretary of the Interior in approving the conveyance of certain land. Title IV would require that certain lands on the Columbia River be administered to provide access to fishing for specified tribes. It would require the Secretary of the Army to acquire at least six sites adjacent to the Bonneville Pool, and would authorize the appropriation of up to $2 million for this purpose. Title IV also would require the Secretary to improve and maintain certain associated lands until they are transferred to the Department of the Interior for maintenance.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Requiring Appropriation Action:					
Estimated authorization level	4.5	0.9	0.9	0.4	0.4
Estimated outlays	2.4	2.4	1.6	.4	.4
Direct spending:					
Estimated budget authority	1.3	−.1	−.1	−.1	−.1
Estimated outlays	1.3	−.1	−.1	−.1	−.1
Estimated increase or decrease (−) in the deficit	3.7	2.2	1.5	0.3	0.3

The costs of this bill fall within budget function 450.

Basis of estimate: Based on information provided by the Bureau of Indian Affairs (BIA), we estimate that Title I would result in no additional costs to the federal government. Section 201, which would establish a minimum payment for claims made under the Old Age Assistance Claims Settlement Act, is estimated to result in savings of about $2.1 million over the next five years, mostly for reduced processing costs as a consequence of eliminating small claims. The transfer from the Treasury to the Chilocco Tribe required by Section 204 would cost $994,000, and Section 216 would result in a tax refund of an insignificant amount. Other provisions of Title II are not expected to result in significant additional cost.

Enactment of Title III would cost the federal government $401,035, assuming that all the required conditions preceding payment would be met, that the appraised value would be not less than the amounts specified in the bill for compensation for the lands, and that payments would be made up to the amounts specified in the bill. This amount would be paid from a permanent appropriation for judgments against the United States.

Assuming the amount authorized is appropriated, the acquisition requirements of Title IV would result in budget authority of $2 million in 1989, with outlays of the same amount estimated to occur over fiscal years 1989 to 1991. Costs of the required land improvements and maintenance are estimated to be about $2 million in each of fiscal years 1989 and 1990, and about $1 million per year thereafter, based on information provided by the Army Corps of Engineers and the Department of the Interior.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On November 3, 1987, CBO transmitted a cost estimate to the House Committee on Interior and Insular Affairs for H.R. 2677 as ordered reported by that committee. The costs of Title I of this bill are identical to those identified in the previous estimate. In addition, the costs estimated for Title III of this bill are identical to those identified in the CBO estimate for S. 802, transmitted to the Senate Committee on Indian Affairs on April 13, 1988.

9. Estimate prepared by: Carol Cohen.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 2677, as amended, will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee received the following letters from the U.S. Department of the Interior giving the Administration's views on Title I and III of H.R. 2677; from the U.S. Department of Justice on Title III of H.R. 2677; and from the U.S. Department of the Army on Title IV of H.R. 2677.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 7, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 2677, "To establish procedures for review of tribal constituents and bylaws or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987)," as passed by the House of Representatives.

We strongly urge the Committee to consider our first substitute bill (enclosed) in lieu of H.R. 2677. However, while our substitute is preferable, we would not oppose enactment of H.R. 2677 if it is amended to address our concerns.

H.R. 2677, as passed by the House, would require the Secretary of the Interior (the Secretary) to review the final draft of a tribe's constitution and bylaws and call an election to be held by the tribe within 180 days after the receipt of a tribal request for an election. In the case of an amendment to a tribe's constitution and bylaws, the Secretary's review and call for election would be required within 90 days from the receipt of the tribe's request. During the review of the draft constitution or amendment, the Secretary would be required to provide whatever technical assistance that is requested by the tribe, or that the Secretary determines is needed. The Secretary would also review the draft constitution or amendment to determine if any provision is contrary to Federal law. After the tribal approval by election, the Secretary must approve the constitution or amendment within 45 days unless the Secretary finds that the proposal would be contrary to Federal law, otherwise approval will be considered as given.

In September 29, 1987 testimony before the House Committee on Interior and Insular Affairs, we opposed H.R. 2677 as introduced, and offered two proposed substitute bills. Our first substitute bill would remove the Secretary from involvement in the calling of elections and approval of constitution and bylaws, and amendments thereto. Our second substitute bill would provide for Secretarial approval only after the tribal election had been held and the proposal approved by the individual voting members of the tribe. We have enclosed substitute bill number one as our recommended substitute for H.R. 2677.

We strongly urge the Committee to consider this substitute bill. Secretarial involvement in the calling of elections and approval of

constitutions and bylaws, and amendments to them, is not consistent with the policy and goal of tribal self-determination. In addition, this option would remove any possibility that there would be disparate treatment between tribes in the approval of elections. Any challenges to tribal elections of tribal governing documents should be resolved through a tribal process in the tribal forums.

If the Committee chooses not to accept our substitute, we would not object to enactment of H.R. 2677 if it is amended as we suggest.

First, H.R. 2677 would amend only the Indian Reorganization Act (48 Stat. 984, June 18, 1934) and therefore the legislation would not apply to all tribes. Approximately 300 tribes have constitutions adopted under the Oklahoma Indian Welfare Act (49 Stat. 1967, June 26, 1936), have constitutions approved under the Secretary's general authority, or have no governing document. In these cases, H.R. 2677 would not apply. As we stated above, we would object to such disparate treatment of tribes.

Second, the legislation would require that the Secretary call and hold an election within 180 days after the receipt of a tribal request for ratification of a proposed constitution, and within 90 days for an amendment to a constitution. We do not support this provision.

The Bureau of Indian Affairs has issued guidelines for review of tribal constitutions which provide 180 days and 90 days for review of constitutions and amendments, respectively. However, the tribe is given as much time as they desire after the Secretary's initial review to request the Secretary to call an election. Once requested, the Secretary must authorize the election within 30 days. These guidelines conform with the recent Federal District Court decision in *Coyote Band of Pomo Indians* v. *United States,* 639 F. Supp. 165 (E.D. Cal. 1985), which held that the Secretary does not have the discretion to delay indefinitely a ratification election by the tribe. However, under our guidelines, the tribe would have as much time as deemed necessary to consider the results of the Secretarial review before proceeding further. This procedure gives the tribe maximum flexibility to determine the best way for them to proceed in light of the Secretary's action.

The procedure established in these guidelines is preferable to the procedure proposed by this legislation, and we urge the Committee to amend this provision to be consistent with our current policy.

Third, H.R. 2677 as passed by the House would eliminate the requirement that the group seeking to organize have a reservation. We object to this provision. The nature and extent of the powers of self-government that a tribe may possess absent a land base is very speculative. In essence, this provision would require the Secretary to approve a constitution which purports to be the governing document of a group with great powers, but in fact the group could have nothing to govern. The Secretary should not be put into this position. Therefore, we recommend that this provision be deleted.

Fourth, section 2 of this legislation defines "contrary to Federal law" as follows:

> One or more provisions in the proposed constitution is clearly contrary to existing judicial interpretations of Federal statutory or case law that is applicable to the tribe.

We object to this definition. First, federal law includes not only judicial decisions and acts of Congress, but also Federal regulations and decisions of administrative tribunals. Therefore, a definition of this type would not be useful.

Furthermore, under this definition the Secretary would not be able to disapprove a constitutional provision, even if it is clearly contrary to statute, if there has been no relevant judicial interpretation of that statute. The Secretary would be required to "approve" a clearly illegal provision.

In addition, the phrase "judicial interpretations of Federal statutory or case law" is so imprecise as to be impossible to apply. For instance, it is unclear whether the term "judicial interpretation" would include only the holding of the case, or the entirety of the decision, including dicta. Furthermore, it is unclear whether the decisions of administrative law judges (ALJs) within the Department are included in the definition. If they are not, the Secretary faces the prospect of being bound by the decisions of the ALJs, and also be required to approve a constitutional provision that is contrary to these decisions. This definition would also forbid the Secretary to apply Federal regulations and published opinions of the Solicitor. These regulations and opinions include a substantial body of law that has developed and been relied upon by tribes, their members, the Federal government and others over a substantial number of years. This result would be untenable.

Finally, the phrase in the definition "applicable to the tribe" creates substantial uncertainty. Either the phrase is surplus, or it has been added to be a severe limitation on the body of law that can be reviewed to determine whether a particular provision is contrary to Federal law. Since such a limitation was undoubtedly not intended, this phrase should be deleted.

Because of all these serious ramifications, we would strongly urge that this definition be deleted. However, if the Committee would wish to include a definition of "contrary to Federal law," we urge that the definition found in H.R. 2677 be replaced with the following substitute:

> "Contrary to Federal law" means that one or more provisions of a proposed constitution or constitutional amendment are clearly contrary to Federal statutes or regulations.

This language would have the advantage of simplicity and make it clear that the source of the Secretary's disapproval must be a statute or regulation, whether or not interpreted by the courts.

Finally, we recommend that H.R. 2677 as passed by the House be amended to eliminate the current statutory requirements that the Secretary approve the tribal selection of tribal attorneys and attorney fees (25 U.S.C. section 81 and 476). It would be consistent with the goals of Indian self-determination to allow the tribes to choose their own attorneys and set the rate of compensation without the Secretary's oversight.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Amdinistration's program.

Sincerely,

ROSS SWIMMER, *Assistant Secretary.*

Enclosure.

DEPARTMENT OF THE INTERIOR AMENDMENT IN THE NATURE OF A SUBSTITUTE FOR H.R. 2677

Strike out all after the enacting clause and insert in lieu thereof the following:

Section 1. The first paragraph of section 16 of the Act follows:

(1) By deleting in the first sentence the words "authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe";

(2) By deleting in the second sentence the words "and approved by the Secretary of the Interior"; and

(3) By deleting the last sentence.

Sec. 2. (a) Section 16 of the Act of June 1, 1934 (48 Stat. 987; 25 U.S.C. 476) is further amended—

(1) in the second paragraph by striking out "the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior"; and

(2) by adding the following paragraph at the end thereof: "After enactment of this sentence, the provisions of a tribal constitution or other tribal enactment requiring approval by the Secretary of the Interior (or any other officer or employee of the United States) of the tribe's choice of legal counsel, the legal counsel's fees, or tribal contracts for legal counsel shall not be enforceable and no contract shall be invalid because it lacks that approval."

(b) The first sentence of section 2103 of the Revised Statutes (25 U.S.C. 81) is amended by striking out "No agreement" and inserting in lieu thereof "Except for the employment of legal counsel, no agreement".

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, April 4, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your February 10, 1988 letter requesting the Administration's views on a draft substitute for S. 802, a private relief bill introduced by Senator Melcher and referred to the Select Committee on Indian Affairs. Subsequently, we received another substitute from Senator Melcher's staff and our comments relate to this latest draft.

We defer to the Department of Justice with respect to the Administration's position on the draft substitute for S. 802. The following information is provided for the Committee's information.

ANALYSIS

Section 1 (a) of the proposed draft substitute bill provides as compensation for and in settlement of all claims arising as the result of alleged errors in the Secretary of the Interior's approval of purported conveyances of land involved in the will of Garret White (also known as Many Whitehorses) by directing the Secretary of the Treasury to pay as a settlement under 31 U.S.C. 1304 (a) (1) as follows:

(1) $50,000 to John Benedict Renville of the Blackfeet Indian Reservation.

(2) $58,500 to be held in trust by the Secretary of the Interior for the Blackfeet Tribe of the Blackfeet Indian Reservation in Montana.

(3) $127,000 to Mary Lois Peterson Munoz of Cut Bank, Montana.

(4) $165,535 to be held in trust by the Secretary of the Interior for John Benedict Renville.

Section 1 (b) declares that the payment and acceptance of such compensation shall be in full satisfaction of all claims that the receiving party has against the United States or any employee or officer thereof, and against any other party, in connection with the purported sale of some 520 acres of trust land involved in the will of Garret White to the Blackfeet Tribe which was approved October 28, 1946. This includes the purported exchange of some 280 acres of the land by the Tribe for some other land, and the purported acquisition of the 280 acres by Mary Lois Peterson Munoz.

Section 1 (c) provides the following conditions precedent to any payment under subsection (a):

(1) Each of the parties shall execute such releases, conveyances, or other documents as the Secretary of the Interior determines are necessary to carry out the Act. The Secretary is authorized to approve and execute on behalf of the United States such documents as are necessary to carry out the Act.

(2) The Blackfeet Tribe shall transfer its interests in the remaining approximately 240 acres of land acquired by the Tribe on October 28, 1946 to the Secretary of the Interior to be held in trust for John Benedict Renville.

(3) Mary Lois Peterson Munoz shall transfer to the Secretary of the Interior all of her interests in the approximately 280 acres of land which had been acquired by the Blackfeet Tribe on October 28, 1946 to the Secretary of the Interior to be held in trust for John Benedict Renville.

(4) A final order is entered in the civil action entitled *John Benedict Renville* v. *Blackfeet Tribe of Indians, et al.,* No. CV-84-41-6F, in the U.S. District Court for the District of Montana dismissing with prejudice all claims, crossclaims, counterclaims, third-party claims, and all other claims arising out of such civil action.

Section 1(d) provides that the land acquired in trust by the Secretary under the Act shall be subject to the laws that would apply if the sale of October 28, 1946 had not taken place.

Section 1(e) provides that the amounts paid under subsection (a) of this Act are tax exempt pursuant to section 7 of the Act of October 19, 1973 (87 Stat. 468; 25 U.S.C. 1407).

Section 1(f) provides that the amounts paid under subsection (a) of this Act to Mary Lois Peterson Munoz shall be considered as funds for condemnation proceedings as provided for in Section 1103 of the Internal Revenue Code.

Section 1(g) limits the amount of attorney fees to be paid for services rendered in connection with any claim described in this bill to 10 percent of any amount paid under the Act.

Finally, Section 1(h) directs the Secretary of the Interior to have made an appraisal of the value of the lands described in subsection (b) as of the date of enactment of this Act. We note that this subsection also provides that the sums paid to the Blackfeet Tribe and Mary Lois Munoz under subsection (a) of this Act shall not exceed such appraisal values, plus a reasonable attorney's fee, not to exceed 10 per cent of such award.

DISCUSSION

John Benedict Renville is an enrolled member of the Blackfeet Tribe, residing on the Blackfeet Reservation in Montana. He was born on June 26, 1924, the son of Genevieve White Renville, Allottee 1135, and the grandson of Mr. Garret White (also known as Many Whitehorses), Allottee 1134.

Mr. Garret White died testate on February 8, 1932, survived by his daughter, Genevieve White Renville. Mr. White executed his last will and testament on May 27, 1929. In part the will reads:

> I wish my daughter, said Genevieve White, to hold the above described land in trust during her lifetime for the benefit of my grandson, John Renville, but she to have the use of same during her lifetime. If it be considered advisable when my grandson reaches the age of say 14 or 15 years to sell some of the smaller pieces of land, my daughter, Genevieve White, may do so, with the advice and consent of the Superintendent of Blackfeet Agency. The money secured in this way to be used for the education of my grandson and to improve or stock the remaining property.

All who have examined the record agree that the decedent gave his daughter, Genevieve, a life estate in certain land described in his will with the remainder over to his grandson, John Renville. The order (issued under authority delegated by the Secretary of the Interior) approving the will and determining heirs dated January 14, 1933, provided among other things "Genevieve White, or Many Whitehorses . . . daughter, entire estate." It is clear that there were no restrictions in the order limiting her interest to a life estate with John Renville being the remainderman as provided in the will.

Fourteen years later, the facts were lost to memory, or ignored for she (Genevieve White Renville) sold and conveyed to the Blackfeet Tribe by warranty deeds approved by the District Director of the Bureau of Indian Affairs, on October 28, 1946, three tracts of

land she received through the will of Garret White. These tracts are described as:

1. That portion of the testator's allotment 1134, described as: W½W½SW¼ sec. 13, T. 32 N., R. 13 W., M.P.M., containing 40 acres more or less.

2. Blackfeet homestead allotment 1136, Eli White described as the NE¼SW¼ sec. 21, T. 33 N., R. 7 W., SW¼SE¼ sec. 14, T. 32 N., R. 13 W., M.P.M., containing 80 acres, more or less.

3. Blackfeet Allotment 2649, Mary Rose White described as the SE¼SW¼, N½SE¼, SE¼, SE¼ sec. 21, SW¼ sec. 22, T. 33 N., R. 7 W., NE¼SW¼ sec. 2, T. 31 N., R. 13 W., NE¼SE¼ sec. 14, T. 32 N., R. 13 W., M.P.M., containing 400 acres, more or less.

The tribe subsequently exchanged 280 acres of Allotment 2649 for the surface only in 280 acres of land in fee status described as the SW¼SW¼, E½SW¼SE¼ sec. 16, T. 33 N., R. 7 W., M.P.M., with Frank and Dorothy Henderson. The Hendersons applied for and received a patent in fee to the surface only in 280 acres of Allotment 2649 described as the N½SE¼, SE¼SE¼ sec. 21, SW¼ sec. 22, T. 33 N., R. 7 W., M.P.M. The fee patent is numbered 1146166 and is dated August 13, 1954. As of September 5, 1974, title to the 280 acres of allotment 2649 had been acquired by Lois Peterson Munoz and she is in present possession of the property.

It has been concluded that Genevieve White was limited to a life estate with the remainder to her son, John Renville. Since Ms. White was limited to a life estate, she was without power to convey a greater estate (warranty deed). It logically follows that the Blackfeet Tribe never received trust title, but held only a life estate during the life of Genevieve, and color of equitable title. The Hendersons as later patentees, may be said to have held the fee title as constructive trustees for John Renville, and such title would then have been conveyed to Lois Peterson Munoz, in constructive trust.

In our view, the fee patent is not valid. The remainder interest in the allotted lands which passed under the will of Garret White, after the life estate of Genevieve terminated, belong to John Renville. The fee patent could not have been properly issued without the consent of Mr. Renville, and Mr. Renville never gave such consent. He was totally unaware of his mother's sale of the land.

In February of 1984, John Renville brought suit against the Blackfeet Tribe, Lois Munoz, and the Department of the Interior seeking damages and title to the 520 acres on the grounds that all subsequent transfers were illegal because his mother lacked the authority to sell the property. On August 19, 1985, the district court dismissed Renville's suit against the United States holding that the 6-year statute of limitations barred his claims. The court also dismissed the claims against the Tribe on the grounds of sovereign immunity. The court declined to dismiss Lois Munoz's across-claim against the Government. On May 12, the Ninth Circuit dimissed Mr. Renville's appeal for failure to perfect the appeal. What remains in the district court is Renville's claims against Munoz and Munoz's cross-claims for indemnification against the government.

The Blackfeet Tribe has agreed, by Tribal Resolution No. 250-87 passed on April 2, 1987, to return the lands remaining in their possession to Mr. Renville, provided they be reimbursed for those

lands. The rental compensation provided in the bill offsets any lost income due to Mr. Renville from the subject lands. Ms. Munoz will be compensated at the fair market value for land lost under this settlement.

At your request, we have reviewed the "Consolidated Agreed Facts" which you enclosed with your letter. We have no objection to the facts as they have been presented. Because Mr. Renville's claims against the Department of the Interior and the Blackfeet Tribe were dismissed by the Court, we are unaware of any additional remedies that he might pursue to resolve this matter.

Finally, the Department of the Treasury has noted that subsection (e) would be clearer if it referred to providing the same tax treatment as in the cited provision. Tax exemption of Mr. Renville's amount is appropriate because it is in lieu of income from allotted land which would have been tax exempt. Tax exemption for Mrs. Munoz would not be appropriate and that specifying that treatment under section 1033 (the draft erroneously says "1103" and should be corrected) of the Internal Revenue code as proceeds of a condemnation is more appropriate. The Tribe is not a taxable entity under the Internal Revenue Code and so tax exemption results even without a provision in the bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM P. RAGSDALE,
Acting Assitant Secretary.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, March 14, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to provide the views of the Department of Justice on the draft substitute for S. 802, a bill "to remedy the adverse results of errors in approvals of land transactions on the Blackfeet Indian Reservation in Montana and settle related claims and for other purposes." For several reasons discussed below, the Department of Justice recommends against enactment of the draft substitute for S. 802.

We oppose the provision of the draft substitute for S. 802 that authorizes the compensation of John B. Renville. The district court held that Renville's suit against the United States was barred by the six-yer statute of limitations. There are no facts that would support carving out an exception to the statute of limitations bar based upon any particular equities here. It may be true that, due to an oversight by the Federal Government, Renville's mother was not prevented from selling land he was entitled to inherit, nor from using the cash proceeds of the sale for purposes which did not benefit her son. Even so, there is no evidence or suggestion the U.S. intended to inflict harm, nor any other extraordinary circumstance that would merit waiving the statute of limitations for this particular claim.

Numerous instances of perceived Federal wrongdoing more egregious than the error affecting Renville have been denied such special treatment in the past. This reflects the important policy considerations underlying the statute of limitations bar—that the United States should not be subject to stale claims such as Renville's which arose over 41 years ago. This would subject the United States to claims which tend to involve unavailable facts and are dependent, at least in part, on lapsed memory. The Department of Justice believes that, from a statute of limitations perspective, enactment of the draft substitute for S. 802 would set an unfortunate precedent.

With respect to the proposed compensation for the Blackfeet Tribe, we note that the Tribe successfully asserted the defense of tribal sovereign immunity against Renville, after having enjoyed the use of much of the 520 acres of land in question for over 40 years. Notwithstanding the immunity from Renville's suit and the apparent tribal benefits derived from the transaction at issue, the draft substitute for S. 802 would provide compensation to the Tribe. We believe that this is unfair to the government.

As for the proposed payment to Mrs. Munoz, it would appear very unlikely that as a third party she has any cause of action against the United States. Moreover, the government would have defenses on the merits to such a claim.

Therefore, the Department opposes the passage of the draft substitute for S. 802. The Office of Management and Budget has advised this Department that there is no objectin to the submission of this report from the standpoint of the Administration's program.

Sincerely,

THOMAS M. BOYD,
Acting Assistant Attorney General.

STATEMENT BY MORGAN R. REES, DEPUTY FOR POLICY, PLANNING AND LEGISLATIVE AFFAIRS, OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS

Mr. Chairman and members of the committee, my name is Morgan Rees. I am Deputy for Policy, Planning, and Legislative Affairs in the Office of the Assistant Secretary of the Army (Civil Works). Accompanying me today are Mr. Bernie Bishop, Chief of Master Planning/Cultural Resources Section from the Corps Portland District and Mr. Charles Flachbarth, our attorney from the Corps Office of Counsel in Washington. Assistant Secretary Page regrets that he cannot appear before you today to discuss the important issue of Indian fishing rights on the Columbia River.

We are here to discuss the status of the law, pertinent agreements and actions taken with respect to the provision of Federal lands along the shoreline of the Columbia river for the use of the Yakima, Umatilla, Warm Springs, and Nez Perce Tribes as in-lieu fishing sites in compensation for historically used sites which were inundated by reservoirs constructed by the Federal government.

BACKGROUND

In 1855 these Tribes first entered into treaties which were ratified in 1859. Under these treaties, the tribes ceded to the Federal Government all Indian title to the lands other than the reservations that they currently occupy in the Columbia River Basin and reserved for themselves the right to fish the banks of the lower Columbia River.

Since the treaties were approved, the Federal government through the United States Army Corps of Engineers has constructed four multi-purpose dams on the mainstem of the lower Columbia River in Oregon and Washington. These four are in addition to ten other dams on tributary waterways in Oregon, Idaho, and Washington as well as four dams on the lower Snake River in Washington. The four dams on the Columbia River mainstem serve to generate 6,040 MW of hydroelectric power and provide navigation facilities to carry approximately 6.4 millon tons of cargo annually. These dams also provided nearly 4.5 million recreation user days in 1986 alone. The Department of the Interior and other private and public utility districts have also constructed numerous power generating projects on the main stem of the Columbia and Snake Rivers and other tributary streams.

STATUS OF AGREEMENTS AND LAWS

There are two agreements, one reached in 1939 and another in settlement of a lawsuit in 1972 which affect the provisions of in-lieu sites. In addition, the 1945 River and Harbor Act authorized acquisition of unspecified sites and facilities.

THE 1939 AGREEMENT

The first of the major projects constructed on the lower Columbia was the Bonneville Dam, constructed in the mid-1930's. The construction of the Bonneville Dam resulted in the inundation of 37 usual and accustomed Indian fishing places on the mainstem of the Columbia River between Bonneville Dam and The Dalles. An agreement was negotiated with the Indian tribes for inundation of their accustomed fishing sites in 1939 and approved in 1940 by the Secretary of War. The agreement called for the Government to acquire more than 400 acres of land at six described sites to serve as "in-lieu" fishing sites. The Corps was to make certain improvements thereon, and thereafter turn the sites over to the Department of the Interior, Bureau of Indian Affairs, to be administered for the permanent use and enjoyment of the Indian tribes.

Section 2 of the 1945 River and Harbor Act was the Congressional implementation of the "agreement" between the Government Officials and the Tribes. Congress authorized the Secretary of War ". . . to acquire lands and provide facilities . . . to replace Indian fishing grounds submerged or destroyed as a result of the construction of Bonneville Dam. . .". Funds not to exceed $50,000 were authorized to be expended for this purpose. This amount proved inadequate for acquisition, and was subsequently raised by Congress in 1955 to $185,000. However, the Act did not specify the number, location, or size of the sites to be acquired.

Because of disagreements among the various parties to the agreement of 1939, not all the sites outlined in the agreement were acquired and some sites were substituted. In all, five tracts, totalling 40 acres, were purchased for the use and benefit of the Indians. The decisions concerning acquisition of the sixth site and disposition of the balance of the funds for improvement of the sites authorized by the 1945 River and Harbor Act were approved by the Umatilla, Warm Springs, and Yakima governing bodies. In acquiring 5 sites, and expending the total amount of funds appropriated by Congress, the Corps is not permitted by law to acquire any additional in-lieu sites. However, as will be discussed later, there are administrative options which could be used to establish in-lieu fishing sites on Federal land.

THE 1972 AGREEMENT

Based on the original authorization for construction of Bonneville Dam, in the late 1960s and early 1970s the Bonneville Power Administration and the Corps of Engineers began studies to enlarge the capacity of the existing Bonneville power-generating capability. This was accomplished by raising the water levels behind the dam to generate additional power at peak loads to help meet the Pacific Northwest Power requirements. This proposal was the subject of a lawsuit, *Confederated Tribes of the Umatilla Indian Reservation* v. *Callaway* in the United States District Court in Oregon. At issue was the effect of the change in the levels of the Bonneville pool on certain of the in-lieu sites, and on the migration of salmonoid fish.

A settlement to the *Confederated Tribes of the Umatilla Indian Reservation* v. *Callaway* lawsuit was reached in 1972 between the Executive Branch of the Federal Government and the Indian tribes. The Executive Branch agreed to try to obtain additional authority from Congress to acquire additional in-lieu sites for the tribes for fishing sites lost in the Bonneville, the Dalles, and John Day Pools, and to improve the facilities at the existing in-lieu sites in the Bonneville Pool. It should be noted that the original authorization in 1945 was limited to the Bonneville pool.

The District Court Decision on the Confederated Tribes case filed in 1973 based on these negotiations recognized that the Federal Agencies had no authority to acquire additional in-lieu sites. The Decision noted that the agencies were recommending to OMB legislation for the acquisition of additional in-lieu fishing sites in the lower Columbia River and for construction of improvement on the existing sites. Such facilities would include access roads, boat ramps, sanitary fish cleaning, curing, and other ancillary facilities with electrical service and landscaping.

In order to fulfill the settlement which was negotiated in 1972, the Corps had constructed the additional improvements to the in-lieu sites. In addition, proposed legislation was submitted to Congress in 1974 under the signature of Secretary of the Army, Howard H. Callaway, to authorize the Secretary of the Army to acquire additional in-lieu sites at Bonneville, The Dalles, and John Day Dams. Such legislation, however, was never enacted. Therefore, we continue to have no authority to acquire additional sites.

The Corps of Engineers has continued to meet with the Bureau of Indian Affairs to discuss the activities and uses of Federal lands for Indian fishing in the lower Columbia River and the impact of fishing on other uses made of the Columbia River waterway. The Bureau of Indian Affairs approached the Corps of Engineers in the past several months to discuss the feasibility of acquiring and/or designating additional fishing sites in the lower Columbia River Basin from Bonneville Pool to McNary Dam in support of Indian fisheries.

The Bureau has identified a number of locations for additional in-lieu fishing sites. The Corps is preparing a Columbia River Regional Overview of the Bonneville, the Dalles, and John Day projects which will address, among other items, the issues involving existing Indian fishing sites and the need to identify other potential future sites. These studies should indicate whether additional sites for tribal fishing are feasible taking into consideration recreational and navigation use of the Columbia River system.

The Secretary of the Army has no enforcement authority under the Lacey Act. Thus, we will defer to the representatives of the Department of Justice in discussing the restrictions placed on fishing in the Columbia River under the Lacey Act and the terms of the Settlement Agreement under the case of *United States* v. *Oregon.* However, to the extent that fishermen attempt to find access to the river through Federal project lands not available for that purpose or to impose their activities in the Federal recreation areas contrary to the rules and regulations established for the use of such areas, they are subject to citation by the Corps of Engineers for violations of Title 36, Code of Federal Regulations regulating the use and enjoyment of the Federal park and recreation areas. Although the Secretary of the Army has no law enforcement capability, per se, any violations of state or Federal law must be referred to local or state law enforcement agents.

In summary the Corps exhausted all authority to acquire in-lieu sites under the 1945 River and Harbor Act, as amended and has no authority to acquire additional sites at this time. We do, however, have expertise which could be used in conjunction with existing authorities to identify such sites and would be happy to work with the Committee and the Department of the Interior in order to protect tribal fishing rights. This concludes my statement and I would be glad to answer any questions you may have.

Changes in Existing Law

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Indian Reorganization Act of 1934

(Section 16 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 475))

[Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may

adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and power: To employ legal counsel the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.]

(a) Any Indian tribe shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when—

(1) ratified by a majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and

(2) approved by the Secretary pursuant to subsection (d) of this section.

(b) Any constitution or bylaws ratified and approved by the Secretary shall be revocable by an election open to the same voters and conducted in the same manner as provided in subsection (a) for the adoption of a constitution or bylaws.

(c)(1) The Secretary shall call and hold an election as required by subsection (a)—

(A) within one hundred and eighty days after the receipt of a tribal request for an election to ratify a proposed constitution and bylaws, or to revoke such constitution and bylaws; or

(B) within ninety days after receipt of a tribal request for election to ratify an amendment to the constitution and bylaws.

(2) During the time periods established by paragraph (1), the Secretary shall—

(A) provide such technical advice and assistance as may be requested by the tribe or as the Secretary determines may be needed; and

(B) review the final draft of the constitution and bylaws, or amendments thereto to determine if they are consistent with applicable State and Federal laws.

(3) After the review provided in paragraph (2) and at least thirty days prior to the calling of the election, the Secretary shall notify

the tribe, in writing, whether and in what manner the Secretary has found the proposed constitution and bylaws or amendments thereto to be contrary to applicable State and Federal laws.

(d)(1) If an election called under subsection (a) results in the adoption by the tribe of the proposed constitution and bylaws or amendments thereto, the Secretary shall approve the constitution and bylaws or amendments, the Secretary shall approve the constitution and bylaws or amendments thereto within forty-five days after the election unless the Secretary finds that the proposed constitution and bylaws or any amendments are contrary to applicable State or Federal laws.

(2) If the Secretary does not approve or disapprove the constitution and bylaws or amendments within the forty-five days, the Secretary's approval shall be considered as given. Actions to enforce the provisions of this section may be brought in the appropriate Federal district court.

(e) In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, state, and local governments. The Secretary shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Office of the Management and Budget and the Congress.

* * * * * * *

THE OLD AGE ASSISTANCE CLAIMS SETTLEMENT ACT

(Subsection (b) of Section 3 (98 Stat. 2317; 25 U.S.C. 2302 (b))

(b) No payment shall be made *to a person* under subsection (a) with respect to any unauthorized disbursement from the trust estate of a deceased Indian if—

(1) the total amount of unauthorized *disbursements* [disbursement] from such trust estate was less than $50; *or*

(2) the payment (not including interest) would be less than $10.

* * * * * * *

AN ACT TO ESTABLISH A RESERVATION FOR THE CONFEDERATED TRIBES OF THE GRANDE RONDE COMMUNITY OF OREGON, AND FOR OTHER PURPOSES

(Section 4(b) of the Act of September 9, 1988 (P.L. 100–425))

(b) Lands Described.—The lands referred to in subsection (a) are those lands located in Oregon, comprised of approximately 12,035.32 acres and more particularly described as:

Willamette Meridian, Oregon

Township Range

South	West	Section	Subdivision	Acres
1	6	30	Lots 1-4, S½NE¼, E½W½, N½SE¼, SW¼SE¼	537.01
2	6	20	E½SE¼, SW¼SE¼	120.00
2	6	28	Lots 4, 5, 9, 16	169.46
2	6	34	NW¼NW¼	40.00
3	6	8	SW¼SE¼	40.00
3	6	18	Lots 1-4, N½NE¼, E½NW¼, NE¼SW¼	507.88
3	6	20	E½	320.00
3	6	24	NW¼NW¼	40.00
3	6	30	Lots 1-4, E½W½	344.96
2[4]	6	6	Lots 1, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼	493.21
3	7	8	W½NW¼, SE¼SE¼	120.00
3	7	10	NE¼NW¼, S½N½, S½	520.00
3	7	12	S½NW¼, SW¼, W½SE¼	320.00
3	7	14	All	640.00
3	7	18	Lots 1, 2, N½NE¼	162.32
3	7	20	NW¼NE¼, S½NE¼	280.00
3	7	22	N½N½, SE¼NE¼, SW¼NW¼, SE¼SW¼, NE¼SE¼, S½SE¼	400.00
3	7	24	All	640.00
3	7	26	E½	320.00
3	7	28	Lot 1, W½NE¼	123.35
3	7	30	E½	320.00
3	7	32	NE¼, NW¼SE¼	200.00
3	7	34	N½N½	160.00
3	8	10	NE¼NE¼, S½NE¼, S½NW¼	200.00
3	8	19	Lots 5, 9-11, W½SE¼	205.38
4	7	2	Lots 1, 2, SW¼	241.73
4	7	4	Lots 1, 2, 3, SE¼NE¼, SE¼SW¼, E½SE¼, SE¼SE¼	321.77
4	7	6	Lot 4	41.22
4	7	8	SW¼, NE¼SE¼	200.00
4	7	10	N½	320.00
4	7	12	N½E½, NW¼NE¼, N½NW¼	280.00
4	7	17	S½NE¼	80.00
4	7	18	SE¼	160.00
4	7	19	Lots 1, 2, E½NW¼	159.26
4	7	24	NE¼SE¼, S½S½	200.00
4	7	26	W½NE¼	80.00
4	7	30	SW¼NE¼	40.00
4	8	28	SE¼SW¼, SE¼SE¼	80.00
2	8	29	S½SW¼	80.00
2	8	31	Lots 5-16	411.78
2	8	32	Lots 1-11	323.42
2	8	34	W½NW¼, NW¼SW¼	120.00
3	8	2	SW¼SE¼	40.00
3	8	4	Lots 3, 4, S½NW¼, W½SW¼, S½SE¼	327.95
3	8	5	Lots 1, 2, SE¼NE¼, S½	449.45
3	8	6	Lots 2-4, E½SE¼	189.37
3	8	7	Lots 1-4, SE¼NE¼	185.80
3	8	8	N½, N½S½	480.00
	Total			12,035.32

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CHILOCCO INDIAN SCHOOL LANDS IN TRUST FOR THE KAW, OTEO-MISSOURIA, PAWNEE, PONCA, AND TONKAWA TRIBES OF OKLAHOMA

(Section 4 preceding paragraph (1) (P.L. 99-283; 100 Stat. 404))

[The unobligated balance of the income (after provision for payment of maintenance and other costs incurred before the enactment of this Act) derived by the Secretary from the interests in the land identified in section 1 of this Act shall be used in accordance with the provision from the Act of September 10, 1982 (96 Stat. at 839) codified in section 155b of title 25, United States Code (1982 Edition) and divided as follows:]

The balance of the income derived by the Secretary of the Interior from the interests in the land described in section 1 that was transferred to the Treasury of the United States as miscellaneous receipts shall be transferred from the General Fund of the Treasury of the United States to, and held in trust by, the Secretary of the Interior for use as follows:

* * * * * * *

INDIANS, CIVIL SERVICE RETIREMENT PROVISIONS

(Paragraph (1) of section 2(c) of P.L. 96-135 (25 U.S.C. 472(c) (1))

(c)(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action respecting [''an employee''] *''an applicant or employee''* not entitled to Indian preference if each tribal organization concerned grants, in writing a waiver of the application of such laws with respect to such personnel action.

* * * * * * *

ACT OF JUNE 25, 1910

(Section 23 (36 Stat. 861; 25 U.S.C. 47))

That hereafter the purchase of Indian supplies shall be made in conformity with the requirements of section thirty-seven hundred and nine of the Revised Statutes of the United States: *Provided*, That so far as may be practicable Indian labor shall be employed, and purchases of the [products] *products (including, but not limited to printing, notwithstanding any other law)* of Indian industry may be made in open market in the discretion of the Secretary of the Interior. All Acts and parts of Acts in conflict with the provisions of the section are hereby repealed.

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FEDERAL WATER POLLUTION CONTROL ACT

(Public Law 92-500, as amended by Public Law 100-4, Act of February 4, 1987)

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SEC. 518. INDIAN TRIBES.

* * * * * * *

(c) RESERVATION OF FUNDS.—The Administrator shall reserve each fiscal year beginning after September 30, 1986, before allotments to the States under section 205(e), one-half of one percent of the sums appropriated under section 207. Sums reserved under this subsection shall be made available only for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes [.], *as defined in subsection (h) and former Indian reservations in Oklahoma (as determined by the Secretary of the Interior) and Alaska Native Villages as defined in Public Law 92-203.*

ACT OF AUGUST 31, 1964

(Subsection (c) (P.L. 88-540; 78 Stat. 747, 25 U.S.C.))

[In all cases in which the Secretary is acquiring for the Yakima Tribes lands or interests in lands presently held in trust or under restrictions for the benefit of an individual Indian, title shall be taken in the name of the United States in trust for the Yakima Tribes. In all cases in which land being purchased is presently held by the grantor in fee simple, title shall be taken for and held by the Yakima Tribes in fee and such land shall not, by reason of its being owned by the tribes, be exempt from taxation in accordance with the laws of the State of Washington.]

Lands and interests in lands acquired by the Secretary pursuant to section (a)(1) of this Act and for the benefit of the Yakima Indian Nation pursuant to Section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465) shall be held in trust by the United States for the benefit of the Yakima Indian Nation.

* * * * * * *

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

(Subsection (h) of section 4 (P.L. 93-638 as amended))

(h) "mature contract" means a self-determination contract that has been continuously operated by [tribal organization] *by a tribal organization* for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribe organization: Provided, That upon the request of [a tribal organization or tribal governing body] *a tribal organization or the tribal organization's Indian tribe for purposes of section 102(a) of this Act,* a contract of the tribal organization in existence on the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 which meets this definition shall be considered to be a mature contract;

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INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

(Subsection (j) of section 4 (P.L. 93–638 as amended))

(j) "self determination contract" means a contract entered into pursuant to this Act between a tribal organization and the appropriate [Secretary the planning] *the Secretary for the planning,* conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: Provided, That [no contract] *except as provided the last proviso in section 105(a) of this Act, no contract* entered into pursuant to this Act shall be construed to be a procurement contract;

* * * * * * *

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

(Subsection (e) of section 5 (P.L. 93–638 as amended))

(e) The Secretary shall report annually in writing [to tribes] *to each tribe* regarding projected and actual staffing levels, funding obligations, and expenditures for programs operated directly by the Secretary serving that tribe.

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INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

(Subsection (c)(2) of section 102 (P.L. 93–638 as amended))

(2) In obtaining or providing such coverage, the Secretary shall, to the greatest extent practicable, give a preference to coverage underwritten by Indian-owned economic enterprises as defined in [section 1425, title 25, United States Code] *section 3 of the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451 et seq.),* except that, for the purposes of this subsection, such enterprises may include non-profit corporations.

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INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

(Subsection (c) of section 110 (P.L. 93–638 as amended))

(c) The Equal Access to Justice Act (Public Law 95–563, Act of October 1, 1980; 94 Stat. 2325, [as amended] *as amended, section 504 of title 5, United States Code, and section 2412 of title 28, United States Code* shall apply to administrative appeals by tribal organizations regarding self-determination contracts.

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THE INDIAN REORGANIZATION ACT OF 1934

(Section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465))

SEC. 5. The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, ex-

change, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided,* That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures now pending in Congress and embodied in the bills (S. 2499 and H.R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H.R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico and for other purposes, or similar legislation, become law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to [this Act] *this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.)* shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

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NATIVE AMERICAN PROGRAMS ACT OF 1974

(Subsection (c)(2) of section 816 (P.L. 93-644; 88 Stat. 2291))

AUTHORIZATION OF APPROPRIATIONS

SEC. 816. (a) There are authorized to be appropriated for the purpose of carrying out the provisions of this title, such sums as may be necessary for fiscal years *1987, 1988, 1989, 1990, and 1991.*

(b) Not less than 90 per centum of the funds made available to carry out the provisions of this title for a fiscal year shall be expended to carry out section 803(a) for such fiscal year.

(c)(1) Except as provided in paragraph (2), there are authorized to be appropriated $500,000 for each of the fiscal years 1988, 1989, 1990, and 1991 for the purpose of providing financial assistance to other Native American Pacific Islanders (including American Samoan Natives) under section 803(a).

(2) No funds may be appropriated under paragraph (1) for a fiscal year unless the amount appropriated under subsection (a) for such fiscal year exceeds 105 percent of the amount appropriated under subsection (a) for [the preceding fiscal year.] *fiscal year 1987.*

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ACT OF SEPTEMBER 21, 1959

(P.L. 86-339 (73 Stat. 604; 25 U.S.C. 995) add the following sentence at the end thereof:)

A payment heretofore or hereafter made to an allottee as compensation for the acquisition of part or all of the allottee's allotment for a public purpose is—

(1) deemed a cash payment in lieu of an allotment for purposes of this subsection;

(2) deemed a right under subsection (a) of this section; and

(3) subject to the Act of March 2, 1931, ch. 374, 46 Stat. 1471 (25 U.S.C. 409a) and the undesignated provision added to the Act of February 8, 1887, ch. 119, by the Act of June 21, 1906, ch. 3504, 34 Stat. 327 (25 U.S.C. 410).

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